



**COUNCIL OF
THE EUROPEAN UNION**

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(OR. f)**

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LIMITE

**PV/CONS 55
JAI 29**

DRAFT MINUTES*
of the 2116th Council meeting
(Justice and Home Affairs)

held in Brussels on 24 September 1998

* Information on the final adoption of Council acts which may be released to the public may be found in Addendum 1 to these minutes.

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1. Adoption of the agenda
11251/98 OJ/CONS 54 JAI 30

The Council adopted the agenda set out in the above document.

2. Approval of the list of "A" items
11252/98 PTS A 56

The Council approved the "A" items listed in 11252/98 PTS A 56. Information concerning item 6 on that list may be found in Addendum 1 to these minutes.

The reference document relating to item 7 should read as follows:

10655/98 TEXT 37
+ COR 1 (i,gr,p)
+ COR 2 (i).

3. Explanatory report on the Convention on the fight against corruption
9016/1/98 JUSTPEN 61 REV 1
+ REV 1 COR 1 (p)
+ REV 1 COR 2 (d)

The Council took note of the explanatory report on the Convention on the fight against corruption as set out in 9016/1/98 JUSTPEN 61 REV 1 + REV 1 COR 1 (p) + REV 1 COR 2 (d).

4. Convention on Mutual Assistance in Criminal Matters
11173/98 JUSTPEN 87
10702/98 JUSTPEN 79

The Presidency stressed the need to speed up proceedings so that the Council could adopt the Convention on Mutual Assistance in Criminal Matters at its meeting in December 1998.

It invited delegations to give their agreement to the proposals set out at the end of 11173/98 JUSTPEN 87.

The Finnish delegation stated its preference for a "technically neutral" solution which covered recourse both to service providers and to ground stations.

The Danish delegation stated its preference for a service-provider solution and emphasised the importance of adequate data protection.

The French delegation said it did not at that stage want to commit itself on the most attractive technical option. It felt it would be more appropriate to look at the legal impact of each of the various technical options and analyse the different arrangements for the protection of liberties made under national law (special protection for politicians and lawyers, rules of procedure, gravity of offence justifying interception, etc.).

The United Kingdom, Irish and Greek delegations shared the Presidency's desire that this convention be concluded in December.

The Presidency concluded that:

- in general, delegations felt that the service-provider solution was appropriate and
- the Working Party must examine in detail the technical and legal aspects of the question of interception.

5. Joint Action on the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds of crime

11141/1/98 CRIMORG 134 REV 1

The United Kingdom delegation withdrew its parliamentary scrutiny reservation and the Netherlands delegation entered a parliamentary scrutiny reservation.

The Luxembourg delegation agreed with the Presidency proposal but felt that the joint action should not extend to less serious offences. Having made that specification, the Luxembourg delegation withdrew its reservation on the draft joint action.

The President noted that there was political agreement, with a linguistic reservation on the part of the Portuguese delegation and a parliamentary scrutiny reservation on the part of the Netherlands delegation. The document would be referred to the legal/linguistic experts so that the Council could adopt it formally.

6. EUROPOL

- Preparations for the entry into force of the Europol Convention

10950/2/98 EUROPOL 96 REV 2

The Council approved the above report. The Presidency asked the delegations to speed up any national procedures necessary for the approval or ratification of the two texts on privileges and immunities and the headquarters agreement.

- Rules of Procedure of the Joint Supervisory Body

10851/3/98 EUROPOL 85 REV 3

The Council held a broad discussion on the text of the draft rules of procedure of the Europol JSB as set out in 10851/3/98 EUROPOL 85 REV 3.

The discussion centred on the nature of the Appeals Committee. The German delegation generally approved of the text, but said it wanted the status of members of the Appeals Committee to be more independent.

The French delegation, supported by the Belgian, Spanish and Italian delegations, would like the Appeals Committee to be more of an administrative body. Its proceedings ought not to be public. The Swedish delegation said it had proposed amendments along those lines. The Italian delegation pointed out that it had proposed some technical amendments.

By way of conclusion the Presidency indicated that it would inform the JSB of the Council's suggestion that Articles 28 and 32 be deleted and that Articles 20 and 22 be amended as agreed by the Working Party on Europol at its meeting on 21 and 22 September 1998 (see 11371/98 EUROPOL 105).

7. EURODAC

- Information from the Presidency

The Council took note of the Presidency's information concerning the progress made since the last Council meeting, in particular as regards the question of the extension of the draft Eurodac Convention to include finger-printing persons detained when illegally crossing a Member State's frontier coming from a non-member country.

Noting that consensus seemed to be emerging on such extension, the Presidency invited delegations, subject to subsequent verification of the various language versions of the definition of the persons in question, to consider, as regards the time for which data relating to such persons was to be kept in the Eurodac system, the possibility of adopting a retention period of two years as part of a general solution.

As regards the possibility of extending the draft Convention to include the finger-printing of persons arrested as being in a Member State's territory illegally, the Council instructed the Permanent Representatives Committee to continue examining that question and the other points outstanding with a view to reaching agreement on the entire dossier no later than the Council meeting planned for 3 and 4 December 1998.

8. Migratory flows (notably Iraq, Kosovo)

- Progress report

In the context of migratory flows from Iraq, the Council noted that the Action Plan adopted by the Council in January 1998 had resulted in the stabilisation of the number of asylum applicants and of illegal immigration. It was agreed that the implementation of the Action Plan, in particular the dialogue with Turkey on the subject, should be continued.

As regards the situation in Kosovo, the Presidency advocated action on three levels, namely:

- preventive measures, including the inclusion in EU missions to Kosovo of migration experts, additional humanitarian aid in view, *inter alia*, of the approach of winter, together with practical help for the neighbouring region and Montenegro in particular;
- combating organised crime in the form of trafficking in human beings;
- the processing of asylum applications.

The Danish delegation stressed the need for rapid action on the part of the European Union so that, with the approach of winter, a human tragedy could be avoided in Kosovo where more than 200 000 people were without shelter. It felt that the Member States must respond quickly to the appeal made by the United Nations for an emergency fund of \$US 54 million.

The Italian delegation also advocated a joint approach to deal with the massive influx of Albanians from Kosovo.

The Belgian delegation proposed drawing up a plan of action at European Union level, involving humanitarian aid for refugees in the region itself and an ad hoc solution that made specific provision for temporary protection and solidarity. The latter would essentially involve a definition of displaced persons, common rules for both the recognition and the conditions of reception of displaced persons and provisions on the physical and financial apportionment of the burden.

The Swedish delegation shared the view of the Belgian delegation and felt that in view of the growing number of asylum applications (2 500 in Sweden in a recent year) it was also vital that a common approach be adopted to the treatment of displaced persons already within the territories of Member States.

The Portuguese delegation was in favour of developing a general approach that could be applied horizontally in the event of major migratory movements.

The German delegation, supported by the Greek delegation, laid particular stress on the need to eliminate the causes of migratory movements. It advocated the development of a package of measures designed, *inter alia*, to support the ban on flights by the Yugoslav airline, such as visa restrictions and a consistent approach to sanctions. It supported the idea of strengthening humanitarian aid on the spot by acting through the HCR. As regards including migration experts in EU missions to Kosovo, the German delegation doubted whether such a measure would be effective, pointing out that such an operation had not produced the expected results in Bosnia, and whether the Yugoslav authorities would accept such observers. Finally, it felt that the introduction of a temporary-protection system might have the effect of encouraging migratory movements, when the objective to be pursued ought to be to prevent such movements happening.

The Commission representative felt that a strategy must be developed at Community level for dealing with situations such as Kosovo. He hoped progress would be made quickly on the revised Commission proposal for a temporary-protection system so that the European Union would have a consistent mechanism to implement in the longer term, although that did not rule out an ad hoc solution for Kosovo.

After the discussion the President concluded that the Council

- expressed concern regarding the troubles in Kosovo and the risk of major migratory movements from the region;
- intended to follow the situation closely and was prepared to adopt appropriate measures as required;
- considered it important to ensure financial assistance for Kosovo and the neighbouring region both through ECHO and on a bilateral level, laying particular stress on practical technical assistance to cover the winter period;
- felt that efforts must be made in order to remedy the causes of migration and to reach agreement as soon as possible on the Commission proposals on temporary protection and solidarity.

The Presidency would inform the Council (General Affairs) that the Council (Justice and Home Affairs) hoped to include migration experts in the European Union missions on the spot in Kosovo, within the framework of existing structures.

9. Ratification of current Conventions (appeal to the Member States in accordance with Recommendations 13 and 14 of the Action Plan and Cardiff conclusions)

9639/98 CK4 25

The Presidency made an emphatic appeal to delegations to speed up their national procedures for the ratification of the instruments referred to in Recommendations 13 and 14 of the Action Plan to combat organised crime.

The Presidency concluded that the ratification situation would be re-examined at the next Council meeting.

10. Preparation of the meeting with the applicant countries

The Presidency indicated that, once the Commission had given an introduction on progress with implementation of the pre-accession strategy, the topics of combating organised crime, judicial co-operation and immigration would be introduced by the European Union side, by the Austrian, United Kingdom and German delegations respectively. The Presidency itself would speak on the subject of combating organised crime.

11. 1997 annual report on organised crime

The Presidency said it would submit a written report on the subject to the Council.

12. Report on the establishment of the Monitoring Centre on Racism and Xenophobia

The Council was informed that the Presidency would give delegations a written report on the establishment and the activities of the European Monitoring Centre on Racism and Xenophobia. The Centre had opened in Vienna in January 1998 following the Council's adoption of Regulation No 1035/97 of 2 June 1997 (OJ L 151, 10.6.1997, p. 1).

13. Other business

- Child pornography

The Council:

- instructed the appropriate Council bodies to expedite the proceedings on the draft joint action to combat child pornography on the Internet (10850/98 ENFOPOL 95 JUSTPEN 83 CRIMORG 127) and on the proposal for a medium-term Community action programme to combat violence against children, young persons and women (DAPHNE);
- invited the Member States to speed up the implementation of the joint action of 24 February 1997 to combat trafficking in human beings and sexual exploitation of children (OJ L 63, 4.3.1997, p. 2);
- confirmed its intention of extending as soon as possible Europol's mandate regarding trafficking in human beings in order to combat the international networks for the production, sale and distribution of pornographic material using children.