

**12009/2/96
REV 2**

LIMITE

**PV/CONS 75
JAI 74**

**DRAFT MINUTES
of the 1971st meeting of the Council
(Justice and Home Affairs)
held in Brussels on 28-29th November 1996**

S U M M A R Y

Page

1.	Approval of the provisional agenda	4
2.	Approval of the list of "A" items	4
3.	Convention on external borders	4
4.	EDU-EUROPOL	4
5.	Draft annotated agenda for the meeting with the Ministers for Justice and Home Affairs of the associated CCEEs	5
6.	Organized crime	5
	a) Report 1995	
	b) Implementation of the fight against organized crime	
7.	Trafficking in Human Beings	6
8.	Drugs	7
	a) Draft report on drugs to the European Council - Third Pillar aspects	
	b) Draft Joint Action concerning the approximation of the laws and practices of the Member States of the European Union to combat drug consumption and drug trafficking	
	c) Draft resolution on sentencing for serious illicit drug trafficking	
9.	Draft Convention on the fight against corruption involving officials of the European Communities and officials of Member States of the European Union	8
10.	Draft Convention on the service in the Member States of the E.U. of judicial and extrajudicial documents in civil or commercial matters	9
11.	Achievements in the field of Justice and Home Affairs during 1996 (draft report to the European Council)	10
12.	Activities in the field of crime prevention	10
13.	Other business	10
	- Elements for a new methodology in the elaboration of Conventions of the Title VI of the TEU (proposition of Spain)	
	- Working programme of the incoming Dutch presidency	

14.	Joint action extending the mandate given to the EUROPOL Drugs Unit	11
15.	EDU/EUROPOL	11
	a) Adoption of notes related to EUROPOL Drugs Unit	
	b) The principles of confidentiality regulations of EUROPOL	
16.	Draft joint action on a uniform format for residence permits	12

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1. **APPROVAL OF THE PROVISIONAL AGENDA**

doc. 12022/96 OJ/CONS 71 JAI 76 + ADD 1

The Council approved the agenda as set out in doc. 12022/96 OJ/CONS 71 JAI 76 and its Addendum 1.

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

doc. 12051/96 PTS A 78

The Council adopted the "A" items as listed in doc. 12051/96 PTS A 78, with the exception of the first indent of item 16.

The document references under item 13 should read:

docs 11148/96 CK4 49
11341/96 CK4 51
+ COR 1 (f,d,i,nl,en,dk,gr,es,p,fi)
+ REV 1 (s)
+ REV 1 COR 1 (s)

3. **CONVENTION ON EXTERNAL BORDERS: ORAL REPORT**

The Presidency informed the Council after bilateral contacts, undertaken by the Irish Presidency, that the main problem preventing progress on the conclusion of this Convention is its territorial application. The Presidency stressed that this problem needs to be solved at political level. In addition, the question of the role of the Court of Justice remains to be solved.

4. **EDU/EUROPOL : REPORT ON ONGOING WORK**

The Council took note of an oral report of the Presidency on EDU/Europol related work which has been focused on the preparation of the post-Convention phase. In the oral report progress on the Analysis Files regulations, Staff regulations and Principles of confidentiality were highlighted.

As regards the ratification of the Convention the Presidency recalled the commitment arrived at during the informal JHA Council in Dublin to complete the ratification process by the end of 1997, and indicated that Ireland was likely to do so before the summer of 1997. The UK delegation informed the Council of its intention to deposit ratification instruments before the European Council of 13/14 December 1996.

5. DRAFT ANNOTATED AGENDA FOR THE MEETING WITH THE MINISTERS FOR JUSTICE AND HOME AFFAIRS OF THE ASSOCIATED CCEEs

docs. 11286/1/96 JAI 70 PECO 161 REV 1
11445/96 JAI 71 PECO 169
11446/96 JAI 72 PECO 170.

The Council agreed on suggestions of the Belgian delegation to amend paragraph 6 of the draft concluding remarks of the Presidency that are in doc. 11446/96 JAI 72 PECO 170. The new paragraph makes a reference to the fight against trafficking in human beings.

The Finnish delegation emphasized the need for cooperation in civil matters. The Italian delegation said that it is important as agreed during a technical meeting on 1 March 1996 to arrive at a common assessment of the phenomenon of organized crime. It recalled the necessity to have CCEE countries participate in the Telematic exchanges.

6. ORGANIZED CRIME

a) Report 1995

doc.10555/2/96 ENFOPOL 155 REV 2

The Council discussed the report on the situation of organized crime in the European Union in 1995. The substantial qualitative improvement of the report was welcomed. The Presidency emphasized increased violence and need for action against money-laundering.

The UK delegation suggested that in future reports details on actions taken should be included. The Netherlands delegation stressed the need for improvement of the methods and the necessity for a greater role of EDU/Europol.

The Council took note of the aforementioned report, it being understood that a modified version would be prepared in anticipation of transmission to the European Parliament.

b) Implementation of the fight against organized crime

doc. 11564/1/96 CK4 53 REV 1

The document 11564/1/96 CK4 53 REV 1, drawn up by the Presidency on its sole responsibility, received considerable support from the Council. Many delegations insisted on the need for ratification of the Europol Convention by all Member States before end 1997. The Finnish delegation added the need for urgent ratification by all Member States of the 1990 Strasbourg Convention on laundering, search, seizure and confiscation of the proceeds from crime. The results of the work are in doc. 11564/2/96 CK4 53 REV 2.

7. TRAFFICKING IN HUMAN BEINGS

- Draft joint action concerning action to combat trafficking in human beings and sexual exploitation of children.

doc. 11241/2/96 CK4 50 REV 2

The Council held an in-depth discussion on the remaining questions as set out in 11241/2/96 CK4 50 REV 2.

The Presidency noted that the text should not make a reference to "possession for personal use" and that the Presidency compromise proposals on items 1 and 2 for discussion were accepted. The Council agreed to delete Title II E from the text.

The Belgian Justice Minister indicated that he could accept the Presidency compromise proposal on item 2 and invited his colleagues not to make use of the opportunity opened by Title II B to impose double criminality.

The Presidency noted that there was political agreement on the text which would have to be finalized by the Legal/Linguistic experts subject to the considerations by Belgium on any political declaration and to the parliamentary reservation by the Netherlands.

- **Recent Commission initiatives**

The Commission informed the Member States that it had adopted and forwarded to the Council and the European Parliament communications concerning trafficking in women for the purposes of sexual exploitation, illegal and harmful content on the Internet and combating child sex tourism, and a Green Paper on the Protection of Minors and Human Dignity in Audiovisual and Information Services.

8. **DRUGS**

a) **Draft report on drugs to the European Council - Third Pillar aspects**

doc. 10884/3/96 CORDROGUE 81 REV 3 + ADD 1

The Council discussed the aforementioned documents as far as they are related to Third Pillar aspects. The results of the work are in doc. 10884/4/96 CORDROGUE 81 REV 4.

b) **Draft Joint Action concerning the approximation of the laws and practices of the Member States of the European Union to combat drug consumption and drug trafficking**

docs 10694/7/96 ENFOPOL 159 REV 7
11970/96 ENFOPOL 200

Without prejudice to parliamentary and scrutiny reservations by the Netherlands and the French delegations, the Council reached a political agreement on the text set out in doc. 12647/96 ENFOPOL 213.

The Austrian delegation stated that the wording of the Joint Action was in its view flexible enough to be interpreted as saying on the one hand that the Member States are not obliged to impose the most severe penalties provided for in their criminal law, and on the other that the Member States are not prevented from applying the principle of "therapy not punishment" in the case of less serious drugs offences. On the basis of this interpretation, the Austrian delegation withdrew its reservation.

c) **Draft resolution on sentencing for serious illicit drug trafficking**

doc. 11381/96 JUSTPEN 141

Without prejudice to a parliamentary reservation by the Netherlands delegation, the Council reached a political agreement on the text set out in 11381/96 JUSTPEN 141.

The Austrian delegation declared that its remarks on agenda item 8(b) also applied analogously to the Resolution, and in view of this withdrew its reservation.

9. **DRAFT CONVENTION ON THE FIGHT AGAINST CORRUPTION INVOLVING OFFICIALS OF THE EUROPEAN COMMUNITIES AND OFFICIALS OF MEMBER STATES OF THE EUROPEAN UNION**

- **Competence of the Court of Justice**

docs. 11724/96 JUSTPEN 144

11979/96 JUSTPEN 148

The Council examined the only outstanding question regarding the draft convention, the role of the Court of Justice, on the basis of the compromise proposal set out in 11979/96 JUSTPEN 148. Some delegations could agree to the proposed compromise. Other delegations (D,NL,B,LUX,A) thought the text of Article 12 set out in 11724/96 JUSTPEN 144 was the most appropriate solution.

The United Kingdom delegation reiterated that in its view there was no justification for involving the Court of Justice in respect of the matters dealt with in this draft Convention. The Council asked the Permanent Representatives Committee to further examine the matter.

10. DRAFT CONVENTION ON THE SERVICE IN THE MEMBER STATES OF THE E.U. OF JUDICIAL AND EXTRAJUDICIAL DOCUMENTS IN CIVIL OR COMMERCIAL MATTERS

doc. 11992/96 JUSTCIV 90 + ADD 1

The Council examined the compromise put forward by the Presidency on the main issues outstanding in relation to the draft Convention (paragraph 5 of 11992/96 JUSTCIV 90), in conjunction with the additional features of the compromise which were submitted by the Presidency during the meeting (11992/96 JUSTCIV 90 ADD 1).

A large number of delegations accepted the compromise. The Swedish delegation withdrew its scrutiny reservation in connection with the interpretation of the Convention by the Court of Justice.

However, a few delegations were unable to agree to the compromise on the following grounds:

- articles 13 and 13A did not expressly appear in the corpus of the Convention, which was contrary to the terms of the annex to 11992/96 JUSTCIV 90.
- the transitional period during which it would be possible to retain the central authority was not acceptable to certain delegations. One delegation wished there to be a single five-year transitional period, while another delegation took the view that a single declaration would suffice, and that renewal at five yearly intervals ought not to be necessary (Art. 2);
- the body established pursuant to Article 2A ought not to have the authority to forward requests for service to the relevant receiving agency, even in exceptional cases and at the transmitting agency's request;
- reservations with regard to the date of service could be made under the system established in Article 8, which would weaken the scope of the provision;

- the Court of Justice's interpretation (Articles 11A to 11D) should, in the view of one delegation, be subject to the same system as in the Protocol to the EUROPOL Convention.

At the close of discussion, the Council instructed the Permanent Representatives Committee to seek to resolve the remaining difficulties arising in relation to the draft Convention, while preserving the overall balance of the compromise which the Presidency had submitted to the Council.

11. ACHIEVEMENTS IN THE FIELD OF JUSTICE AND HOME AFFAIRS DURING 1996 (DRAFT REPORT TO THE EUROPEAN COUNCIL)

doc. 11118/2/96 JAI 68 REV 2

Subject to the rewording of point 4.1.9 to take account of the comment made by the Netherlands delegation, the Council took note of the report on the achievements in the field of Justice and Home Affairs during 1996.

12. ACTIVITIES IN THE FIELD OF CRIME PREVENTION - REPORT

The Swedish delegation insisted on the need to step up the work in the field of crime prevention. It welcomed the initiative of the Dutch delegation to organize a seminar on this subject during its presidency.

The Swedish delegation emphasized that the Member States should consider an appropriate legal instrument, for example a joint action dealing with questions about exchange of information.

13. OTHER BUSINESS

- **Elements for a new methodology in the elaboration of Conventions of the Title VI of the TEU (proposition of Spain)**

doc. 12015/96 JAI 75

The Council took note with interest of the Spanish proposal and decided to forward it to the Group of personal representatives (IGC).

- **Working programme of the incoming Dutch presidency**

doc. 11984/96 JAI 73

The Council took note with interest of the working programme of the incoming Dutch presidency set out in the document 11984/96 JAI 73.

14. JOINT ACTION EXTENDING THE MANDATE GIVEN TO THE EUROPOL DRUGS UNIT

docs 11002/96 EUROPOL 55
10592/96 EUROPOL 52 + REV 1 (s)

The Council approved the Joint Action in principle, subject to the parliamentary reservation by the Netherlands, with the aim of adopting it formally as an "A"-point at a forthcoming Council.

15. EDU/EUROPOL

a) Adoption of notes related to Europol Drugs Unit

docs 11084/96 EUROPOL 57
11127/96 EUROPOL 60
11086/96 EUROPOL 59
11128/96 EUROPOL 61
11085/1/96 EUROPOL 58 REV 1

The Council noted the reports on :

- the Europol Computer System,
- discharge to be given to the EDU Coordinator for the implementation of the 1995 budget,
- the activities of the EDU 1 January - 30 June 1996,
- a supplementary and amended budget for 1996 (VAT refund), and
- EDU's Working Programme for 1997.

The Council approved these reports in principle subject to a parliamentary reservation by the Netherlands, with the aim of approving them formally as "A"-points at a forthcoming Council.

b) The principles of confidentiality regulations of Europol

docs 11468/1/96 EUROPOL 66 REV 1
11143/96 EUROPOL 62

The Council noted and approved in principle of the agreement on the Guiding Principles of the Confidentiality Regulation that had been reached in Permanent Representatives Committee, subject to the parliamentary reservation by the Netherlands, with the aim of approving the agreement formally as an "A"-point at a forthcoming Council.

16. DRAFT JOINT ACTION ON A UNIFORM FORMAT FOR RESIDENCE PERMITS

doc. 11907/2/96 ASIM 166 REV 2.

The Council gave its political approval to the joint action on a uniform format for residence permits. The Netherlands delegation had a parliamentary reservation on this text. Once this reservation is lifted:

- the text of the Draft Joint Action, as reviewed by the jurists/linguists, will be adopted formally as an "A-item" and published in the Official Journal;
- the statements, given on page 9 of the document, will be entered in the Council minutes.
