

7877/96

LIMITE

**PV/CONS 36
JAI 38**

DRAFT

MINUTES

of the 1933rd meeting of the Council

(Justice and Home Affairs)

held in Luxembourg on Tuesday 4 June 1996

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1. ADOPTION OF THE AGENDA

7798/96 OJ/CONS 34 JAI 37

The Council adopted the above agenda. There was no "Other business".

2. APPROVAL OF THE LIST OF "A" ITEMS

7799/96 PTS A 36 + ADD 1 + ADD 2 + ADD 3

The Council adopted the "A" items listed in 7799/96 PTS A 36 + ADD 1 + ADD 2 **except for** items 1, 2, 4, 5, 6 and 7 (first indent):

1. Illegal trafficking of works of art
7333/96 ENFOPOL 91
2. Measures to combat counterfeiting
7332/96 ENFOPOL 90
7167/1/95 ENFOCUSTOM 14 REV 1
4. Draft joint position on pre-frontier assistance and training assignments
7857/96 ASIM 85
5. Draft joint action adopted by the Council on the basis of Article K.3 of the Treaty on European Union providing for a common framework of the initiatives of the Member States of the European Union concerning liaison officers
7522/96 ENFOPOL 95
7520/96 ENFOPOL 94
6. Draft Council Decision on measures implementing Article K.1 of the Treaty on European Union
7419/1/96 JAI 32 REV 1
7. EDU
– Work programme from July to December 1996
7334/96 EUROPOL 29

Item 11 in 7799/96 PTS A 36 ADD 3 was not adopted.

3. DRAFT COUNCIL ACT ESTABLISHING THE CONVENTION ON THE CROSSING BY PERSONS OF THE EXTERNAL FRONTIERS OF THE MEMBER STATES OF THE EUROPEAN UNION

– Progress report

7574/96 ASIM 80

The Council took note of progress in the proceedings on the draft Convention on the crossing by persons of the external frontiers of the Member States of the European Union.

During a brief exchange of views several Ministers emphasized the importance of this Convention.

The Portuguese Minister described Portugal's particular problems in continuing the work on the Convention, which was connected with the issue of East Timor.

Following the Council's exchange of views, the Presidency concluded that a solution had to be found speedily to the two main problems in connection with the territorial application of the Convention (Article 30 of the draft) and the role of the Court of Justice (Article 29 of the draft).

4. FREE MOVEMENT OF PERSONS

- (a) Proposal for a Council Directive on the elimination of controls on persons crossing internal frontiers**
- (b) Proposal for a Directive of the European Parliament and of the Council amending Council Directive 68/360/EEC of 15 October 1968 on the abolition of restrictions on movement and residence within the Community for workers of Member States and their families and Council Directive 37/148/EEC of 21 May 1973 on the abolition of restrictions on movement and residence within the Community for nationals of Member States with regard to establishment and the provision of services**
- (c) Proposal for a Council Directive on the right of third-country nationals to travel in the Community**

Following the discussion at the Internal Market Council meeting on 28 May and the request made on that occasion, in particular by the French delegation, the Council discussed a number of institutional and procedural aspects raised by these three proposals.

The Council took note of statements from several delegations pointing out in particular that, over and above the objective of achieving the free movement of persons within the Community, these proposals touched on other political issues, in particular immigration and security. It was acknowledged that these aspects, and also the accompanying measures on which actual abolition of checks at internal frontiers depended, came under the Third Pillar.

The Council also noted the statement by the Commissioner Mr MONTI to the effect that the Commission would maintain its proposals as they stood until the European Parliament had delivered its Opinion.

In conclusion, the President instructed the Permanent Representatives Committee to continue examining the proposals with a view to the discussions being resumed at a later stage in the Internal Market/Justice and Home Affairs Council.

5. DRAFT COUNCIL RECOMMENDATION ON COMBATING THE ILLEGAL EMPLOYMENT OF THIRD-COUNTRY NATIONALS

6982/2/96 ASIM 68 REV 2

The delegations agreed in principle to the text in 6892/2/96 ASIM 68 REV 2. The United Kingdom reiterated its reservation of principle linked to the problem of BSE. The Swedish and Finnish delegations maintained linguistic reservations.

6. EURODAC

– Progress report

7417/96 ASIM 77

The Council took note of progress on the draft Convention establishing a system for the exchange of dactyloscopic records of asylum-seekers at European level (Eurodac) for the identification of asylum-seekers.

The President said that work on the technical specifications for the system and on the draft Convention would continue in parallel so that the Council could take a definitive decision on the implementation of the system at a meeting in the near future.

7. EDU

(a) Draft 1997 budget

7717/1/96 EUROPOL 31 REV 1

The Council approved a 12% increase for the EDU in the 1997 budget as compared with the budget for 1996.

(b) Europol computer system

7718/1/96 EUROPOL 32 REV 1

The Council took note of the above document, on the understanding that the Spanish delegation's concerns would be taken into consideration when the report to be submitted by the EDU was examined.

**8. DRAFT JOINT ACTION CONCERNING THE CREATION AND MAINTENANCE OF A
DIRECTORY OF COUNTER-TERRORIST COMPETENCES TO FACILITATE
COUNTER-TERRORIST COOPERATION BETWEEN THE MEMBER STATES**

7606/96 ENFOPOL 96

Because of the problems arising in connection with the common agricultural policy (beef and veal), the United Kingdom delegation said it could not agree to the draft Joint Action concerning the creation and maintenance of a directory of country-terrorist competences to facilitate counter-terrorist cooperation between the Member States.

The President of the Council decided in conclusion that, after examination by the Legal/Linguistic Experts, the draft would be placed on the Council agenda as an "A" item as soon as the United Kingdom objection had been withdrawn.

9. EUROPEAN UNION PARTICIPATION IN THE ILEA (International Law Enforcement

Academy)

7607/96 ENFOPOL 97 + EXT 1 (fin,s)

The Presidency's proposal was opposed by the French delegation, which considered that European Union participation was not desirable, given the lack of interest shown in the project by the CCEE themselves, the fact that the content of the courses offered was not properly geared to European realities and characteristics and the scale of the Academy's operating cost.

The central issue was to decide on the best way of meeting the law-enforcement training needs of the CCEE and not to take over the United States' financial involvement in an initiative that had been taken without prior consultation of the European Union and was bound to fail.

A number of delegations (NL/EL/DK/B/Commission) expressed real interest in Union participation in the running and even the funding of the Academy, which would make it possible to shape the content of the training courses according to the needs of the CCEE. Some of these delegations said that, if Union participation in the ILEA proved impossible, alternative forms of assistance for the CCEE should be sought.

In this context the Austrian delegation referred to the Academy in Vienna (MEPA). After noting the Austrian delegation's offer to submit a report on the Vienna Academy, the President concluded that the question of Union participation in the Budapest Academy remained open and had to be discussed further in the months to come.

10. RELATIONS WITH THIRD COUNTRIES

(a) Structured dialogue with the CCEE

– Progress report

7748/96 JAI 35

The Commission representative welcomed the priority which the incoming Irish Presidency gave to the drugs issue in relations with the CCEE. Of particular importance here were the report by Mr Langdon and the PHARE programme. It was important that each Member State should give an outline of its bilateral assistance to the CCEE.

The Council took note of the document mentioned above.

(b) Latin America and the Caribbean

– Progress report

7746/96 CORDROGUE 33

The Commission representative said the Caribbean was an important transit region. The countries of the region had played an active part in the preparation of the report on the Caribbean. Greater coordination was needed.

The Council took note of the report mentioned above.

11. DRAFT COUNCIL RESOLUTION SETTING PRIORITIES FOR COOPERATION IN THE FIELD OF JUSTICE AND HOME AFFAIRS FOR THE PERIOD 1 JULY 1996 TO 30 JUNE 1998

7747/96 JAI 34

The Portuguese and Greek delegations having withdrawn their remaining reservations, the Presidency noted that all delegations were agreed on the content of the draft Council Resolution setting priorities for cooperation in the field of justice and home affairs for the period 1 July 1996 to 30 June 1998, while at the same time it recorded a linguistic reservation from the Swedish delegation and a general reservation from the United Kingdom delegation linked to matters arising in connection with the common agricultural policy (beef and veal).

12. FINANCING OF TITLE VI

7749/96 JAI 36

The Netherlands delegation expressed its concern at the lack of any decision on financing, six months having elapsed since ECU 14,4 million were entered in the 1996 budget. It urged the Presidency to step up the work on the subject so that an early decision could be taken along the lines of the demands of the European Parliament (that the funding programmes should be multiannual, the appropriations should be concentrated on projects that came within the priorities established in Item 11 above, the Commission's role in the management of the programmes should be increased, etc.). It mentioned a number of conditions that ought to be added to permit Community funding of national projects (national joint funding up to 50% of the costs of the project, participation of at least two Member States, exclusion of equipment costs, etc.).

The Commission said that two multiannual programmes on the fight against false documents and the training of lawyers would shortly be submitted.

The Presidency noted these various interventions and assured the Commission and the delegations that it would endeavour to step up the work so that decisions were taken more promptly in 1996 than they had been in 1995.

13. ROLE OF THE COURT OF JUSTICE

– EUROPOL Convention and other Third Pillar Conventions

7788/96 JUR 174 COUR 6 + EXT 1 (fin,s)

7791/96 JUR 175 COUR 7

The Council agreed to discuss this matter in an informal context.

14. DRAFT CONVENTION ON IMPROVED EXTRADITION BETWEEN THE MEMBER STATES OF THE EUROPEAN UNION

7753/96 JUSTPEN 77 + EXT 1 (fin,s)

The Council discussed this draft in detail on the basis of 7753/96 JUSTPEN 77. The United Kingdom delegation entered a reservation on the whole of the draft Convention in view of the matters arising in connection with the common agricultural policy (beef and veal).

Following a proposal from the French delegation (7964/96 JUSTPEN 80), the Council welcomed the idea that Member States would be able to:

- depart from the principle of double criminality with regard to the offences mentioned in Article 2a(1) of the draft Convention or, alternatively, where they had entered reservations within the meaning of Article 2(3);
- undertake to establish common charges, along the lines suggested by the French delegation, with regard to participation in an association to commit offences.

Regarding life sentences and detention orders (Article 2(3)), the Portuguese delegation welcomed the solution proposed by COREPER (see 7753/96 JUSTPEN 77, page 2), subject to a more detailed examination of the issue.

The Council recorded an agreement in principle on the text of Article 5. It also reached broad agreement on the joint declaration by the Danish, Finnish and Swedish delegations concerning this Article and on the possibility of such a declaration being annexed to the Convention. In this last case, as regards the statements made on the same issue, the Swedish delegation wanted equal treatment on the part of the other Member States under the 1957 European Convention on Extradition with regard to the concept of "nationals".

The Spanish delegation withdrew its reservation on Article 15(4) in the light of the opinion from the Council Legal Service (see 7650/96 JUR 168). The French delegation withdrew its proposal concerning Article 15(6).

After the discussions, the Council instructed COREPER to continue its examination in more detail with particular reference to the following three aspects, which it regarded as fundamental:

- departure from the principle of double criminality and the possibility of establishing common charges in respect of participation in a conspiracy or association to commit offences (Article 2a);
- extradition from Portugal in the case of an offence punishable by a life sentence or detention order;
- matters still outstanding with regard to the joint declaration by Denmark, Finland and Sweden on the concept of "nationals".

15. FIGHT AGAINST FRAUD AND CORRUPTION

(a) Draft Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union

7751/96 JUSTPEN 75

The Spanish delegation having withdrawn its reservation on Article 13(4) of the draft, and without prejudice to a general parliamentary scrutiny reservation from the German delegation and a general reservation from the United Kingdom delegation linked to matters arising in connection with the common agricultural policy (beef and veal), the Council established a political agreement on the text, except for Article 12 concerning the jurisdiction of the Court of Justice.

On the question of the Court's jurisdiction, the delegations took the positions described in Section II(a) of the report by COREPER.

The Commission representative commented in particular that there had to be a genuine role for the Commission and that the alternative version of Article 12 contained in 7391/96 JUTPEN 69 would not be satisfactory in this respect.

The French delegation said it could agree to paragraphs 1, 2 and 3 of the alternative text. It also proposed that, insofar as it was not possible to agree on the jurisdiction of the Court of Justice for the time being, the matter could be settled in a Protocol to the Convention at a later stage. This might enable the Convention to be adopted at an early date so that the fight against corruption could be maintained.

The Greek delegation expressed the view that the jurisdiction to be conferred on the Court concerning referrals for preliminary rulings should only cover provisions connected with Community legislation, i.e. not to provisions relating to nationals officials.

(b) Draft second Protocol to the Convention on the protection of the European Communities' financial interests

7752/96 JUSTPEN 76

The President of the Council noted with satisfaction that considerable progress had been made on the dossier, especially as regards the liability of legal persons, confiscation, laundering and mutual assistance. On this basis he expressed the hope that the matters still outstanding would be reexamined with a view to reaching agreement on the draft Protocol at the next meeting of the Council (JHA) under the Irish Presidency.

The Luxembourg delegation withdrew its reservation on Article 5 and its scrutiny reservation on the first sentence of Article 6(3)).

16. DRAFT CONVENTION ON THE SERVICE IN THE MEMBER STATES OF THE EUROPEAN UNION OF JUDICIAL AND EXTRAJUDICIAL DOCUMENTS IN CIVIL OR COMMERCIAL MATTERS

7638/96 JUSTCIV 40 + ADD 1

The Council discussed the questions put forward by the Presidency concerning the draft Convention (see 7638/96 JUSTCIV 40 + ADD 1).

In this connection:

- Several delegations recommended setting up a decentralized system for the transmission of documents subject to the central authorities being maintained in the exceptional cases referred to in Article 2a of the draft Convention. In particular, one delegation had doubts about the feasibility of such decentralization. In the interests of finding a solution acceptable to all, the Irish delegation suggested a five-year period during which the current system of central authorities continued to apply. After this period a decentralized system would be established.

- The Council established broad agreement on the generalized transmission of documents and supporting papers by fax. The United Kingdom delegation entered a scrutiny reservation on this point.
- Several delegations had misgivings about including provisions on the time of service (Article 8).

After these discussions, the Council instructed the Working Party to continue its proceedings.

17. DRAFT JOINT POSITION OF THE MEMBER STATES OF THE EUROPEAN UNION ON THE DRAFT HAGUE CONVENTION ON THE PROTECTION OF CHILDREN

7756/96 JUSTCIV 42 + EXT 1 (fin,s)

The Council discussed the draft common position. It noted that:

- several delegations requested that the square brackets around the words "European Union" in the disconnection clause should be deleted. Other delegations wanted to keep the square brackets or to delete the words "European Union";
- the Portuguese delegation said the disconnection clause did not accord with the terms of reference issued by the Council.

The Council was unable to adopt the draft common position but it established the view that the Presidency should be called on to submit a disconnection clause, without square brackets, at the eighteenth session of the Hague Conference.