

8230/98
ADD 1

LIMITE

PV/CONS 36
JAI 14

ADDENDUM

to

DRAFT MINUTES (*)

of the **2099th** Council meeting

(JUSTICE AND HOME AFFAIRS)

held in Brussels on 28 and 29 May 1998

(*) The information from the Council minutes which is contained in this Addendum is not confidential and may therefore be released to the public.

SUMMARY

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"A" Items

Item 16.	Adoption in the official languages of the Communities of a Decision of the Council and of the Commission concerning the conclusion of the Agreement between the European Communities and the Government of the United States of America on the application of positive comity principles in the enforcement of their competition laws	3
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Items on the agenda concerning the definitive adoption of Council acts released to the public

"A" items: (list: 8764/98 PTS A 37 + ADD 1)

When definitively adopting the "A" items relating to legislative acts, the Council agreed to enter the following in the minutes:

Item 16. Adoption in the official languages of the Communities of a Decision of the Council and of the Commission concerning the conclusion of the Agreement between the European Communities and the Government of the United States of America regarding the application of positive comity principles in the enforcement of their competition laws
8638/98 ECO 176 RC 16 WTO 67
+ COR 1 (fin)
+ COR 2 (i)

The Council adopted the above **Decision**. (Legal basis: Article 87 in conjunction with the first subparagraph of Article 228(3) of the Treaty establishing the European Community.)

Statements

1. Commission statement on confidentiality of information

"The statement made by the Commission in April 1995 on the confidentiality of information and the exchange of interpretative letters dated 31 May and 31 July 1995 in relation to the 1991 Agreement apply in their entirety to this Agreement.

Article VII of this Agreement states that existing laws remain unchanged and that the Agreement must be interpreted consistently with those existing laws. This Agreement therefore cannot permit either of the Parties' competition authorities to do any act they do not already have the power to do. One consequence of this is that the Commission may only provide information to the US authorities where it is consistent with Community law to do so.

While this Agreement envisages that it may be appropriate to provide information to the other party in order to keep it informed of enforcement activities, confidential information may only be provided with the consent of the source of that information. Community law provides a high level of protection to confidential information provided to the Commission, and it will be necessary that any consent obtained is sufficient to discharge the Commission from its obligation of confidentiality pursuant to general principles of Community law, the case-law of the Court of Justice of the European Communities and Article 20(2) of Council Regulation No 17."

2. Commission statement on transparency

"The principles on transparency which govern the relationship between the Commission and the Member States in the application of the competition rules as enshrined, in particular in Council Regulation No 17, the statement made by the Commission in April 1995 on transparency and the arrangements contained in the exchange of interpretative letters dated 31 May and 31 July 1995, in relation to the 1991 Agreement shall apply.

The Member States whose interests are affected shall be informed as soon as is reasonably possible of all requests by the US authorities to investigate or remedy anti-competitive activities and of all proceedings opened by the Commission as a result of a request by the US authorities under Article III of this Agreement.

The Member States whose interests are affected shall be informed as soon as is reasonably possible of requests to the US authorities under Article III of this Agreement to investigate anti-competitive activities.

The Member States whose interests are affected shall be informed as soon as is reasonably possible of US deferrals or suspensions of enforcement activities pursuant to Article IV(2) of the Agreement, or of Commission and US initiations or re-institutions of such activities pursuant to Article IV(4) of the Agreement.

When the Commission opens proceedings following a request by the US authorities under Article III of this Agreement, the undertakings concerned shall be informed of the existence of the request, at the latest when the statement of objections is issued, or when a publication pursuant to Article 19(3) of Council Regulation No 17 is made.

The annual report presented by the Commission to the European Parliament and the Council on the application of the 1991 Agreement shall also cover the application of this Agreement, including any cases where information has been exchanged under the Agreements."