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**LIMITE**

**PV/CONS 74**

**JAI 35**

**DRAFT  
MINUTES  
of the 2055th Council meeting  
(Justice and Home Affairs)**

**held in Brussels on 4 and 5 December 1997**

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**1. Adoption of the agenda**  
12905/97 OJ/CONS 74 JAI 34

The Council adopted the above agenda.

**2. Approval of the list of "A" items**  
12906/97 PTS A 73 + ADD I

The Council adopted the "A" items listed in 12906/97 PTS A 73 and 12906/97 PTS A 73 ADD 1 with the exception of item 1(d).

**3. Draft Convention on jurisdiction and the recognition and enforcement of judgments in matrimonial matters (Brussels II)**  
12861/97 JUSTCIV 89 + ADD 1

The Council

- noted that there was political agreement on the draft convention and the draft protocol as a whole, on the basis of the considerations set out in 12861/97 JUSTCIV 89 and 13245/97 JUSTCIV 90;
- asked that the final technical aspects be resolved by the working parties so that the draft convention and protocol could be established by the Council and signed by the Member States in the first half of 1998;
- noted that the Presidency intended to consult the European Parliament on the draft convention;
- noted
  - = the statement by the Italian delegation set out in annex;
  - = the statement by the Finnish delegation set out in annex.

At that juncture several delegations asked that consideration be given to the means to be employed to enable the Court of Justice of the European Communities to give preliminary rulings at short notice on questions of interpretation of the convention.

#### **4. Draft Convention on mutual assistance in criminal matters between the Member States of the European Union**

12863/97 JUSTPEN 111

12862/97 JUSTPEN 110

12323/97 JUSTPEN 103

The Council examined certain questions concerning the scope of the convention on the basis of 12863/97 JUSTPEN 111. In that connection the President reminded the Council that the deadline for the adoption of the convention had been fixed as the end of 1997/mid-1998 in the Action Programme on organized crime. Bearing that deadline in mind, the Council agreed that the scope of the convention should be restricted to matters already covered in the draft, on the understanding that certain questions (modern cross-border investigation methods, searches and seizure) should be covered by a protocol to the convention, to be drawn up before 1 July 1999.

The Council also noted the progress made in the proceedings and confirmed the agreement reached on certain articles of the convention (Articles 1, 10, 13, 14, 19 and 20).

#### **5. Draft Convention on driving disqualifications**

12850/97 JUSTPEN 109

The Council held an initial exchange of views on the draft convention. In particular it examined Article 8 of the draft, which dealt with the extent to which the right of the State in which an offence took place to implement its decision to disqualify a person from driving within its territory was affected by the implementation of that decision in the State of residence in accordance with Article 3 of the draft convention. Several delegations could accept the Presidency compromise proposal. Certain other delegations, however, maintained reservations on that point.

In addition, the Council established that problems relating to the establishment of facts (reservation by the Danish delegation) and the possibility for the State of residence of adding to the penalty imposed by the State of the offence (reservations by the Danish and Swedish delegations and scrutiny reservation by the German delegation) remained.

The Irish delegation withdrew its general scrutiny reservation on the draft.

The Council instructed the competent bodies to continue their proceedings with a view to reaching agreement on the draft as soon as possible.

## 6. Fight against organized crime

### (a) Draft joint action to create a judicial contact network

9804/3/97 CRIMORG 1 REV 3

After a brief exchange of views between the Belgian, Spanish and United Kingdom delegations, the Belgian delegation asked the Member States to indicate their contact points so that the network could be established at an early date and a better idea could be obtained, at the Council's next meeting, of what the network would be like in practice. The Presidency would then ensure that the contact points were notified to other Member States.

The Presidency noted the Council's agreement that the Member States should send lists of their contact points to the Council General Secretariat informally in the course of the next few weeks, ensuring that those lists were definitive. The Council would assess the situation at its following meeting with a view to reaching formal agreement on the draft Joint Action proposed by Belgium and the Presidency.

### (b) Draft joint action on making it a criminal offence to participate in a criminal organization in the Member States of the European Union

10407/6/97 CRIMORG 6 REV 6

12678/97 JUR 391 CRIMORG 25

The outcome of the Council's proceedings is given in 13174/97 CRIMORG 32.

### (c) Draft joint action establishing a programme of exchanges, training and cooperation for persons responsible for action to combat organized crime (FALCONE programme)

12369/2/97 CRIMORG 20 REV 2

The Council noted that common ground existed on the draft Joint Action establishing a programme of exchanges, training and cooperation for persons responsible for action to combat organized crime (the "Falcone programme") and decided to adopt it formally once it had received the European Parliament's Opinion. The Netherlands delegation entered a parliamentary scrutiny reservation.

### (d) Report on the state of organized crime in the European Union in 1996

12447/1/97 ENFOPOL 219 REV 1

#### The Council

- took note of the above report;
- asked the Multidisciplinary Working Party on Organized Crime to draw the operational conclusions from it;
- decided to send the report to the European Parliament.

## 7. Customs cooperation

- **Draft Resolution adopting a strategic programme for customs administrations (third pillar)**  
11467/97 ENFOCUSTOM 57  
10988/97 ENFOCUSTOM 51

The Council noted that there was agreement on the draft Resolution adopting a strategic action programme for the customs administrations of the Member States of the European Union, apart from the question of the definition of its territorial scope. It instructed the relevant subordinate bodies to resolve the matter so that the Resolution could be adopted as soon as possible.

## 8. Preparation for the structured dialogue

- (a) **Draft annotated agenda for the meeting with the Ministers for Justice and Home Affairs of the associated CCEE**  
12333/97 JAI 27

The Council approved the draft annotated agenda as set out in 12333/97 JAI 27.

- (b) **Rule of law**

The Council took note of the conclusions of the Conference on the rule of law in a democratic society held in the Netherlands on 23 and 24 June 1997.

## 9. Terrorism: internal and external threat

12764/97 ENFOPOL 227

The Council took note of the above document on the internal and external threat of terrorism.

## 10. Measures to combat drugs

- (a) **Draft report to the European Council on drugs**  
12254/1/97 CORDROGUE 74 REV 1

The Council took note of the above report with a view to passing it to the General Affairs Council and the European Council for approval. It agreed to send the report to the European Parliament.

- (b) **Draft report on implementation of the joint action of 17 December 1996 on the approximation of the laws and practices of the Member States of the European Union to combat drug addiction and to prevent and combat illegal drug trafficking**  
11736/1/97 CORDROGUE 71 REV 1

The Council took note of the above report.

## 11. Europol

- **Trafficking in human beings**  
8663/5/97 EUROPOL 35 REV 5

The Council

- approved the report set out in annex to 8663/5/97 EUROPOL 35 REV 5;
- agreed to add the following to the definition of "traffic in human beings" given in the annex to the Europol Convention: "these forms of exploitation include production, sale or distribution activities of child pornographic materials";
- agreed to enter in its minutes the following statement, which would be published in the Official Journal with the Decision taken on the basis of Article 43(3) of the Europol Convention: *"The Council, acting to further the objectives 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"*;
- instructed the competent bodies to submit a draft amendment to the Convention in accordance with the procedure laid down in Article 43(3) of the Europol Convention as soon as that Convention entered into force.

## 12. Influx of immigrants from Iraq

12512/2/97 ASIM 229 REV 2

The Council discussed in depth the serious problem posed by the massive influx of Iraqi nationals into several Union Member States.

It approved the Presidency's report, set out in 12512/2/97 ASIM 229 REV 2, as supplemented by the Netherlands delegation's comments (see 12512/3/97 ASIM 229 REV 3), and the report drawn up by the Multidisciplinary Working Party and annexed to that document. It took note of a draft programme of action proposed by the German delegation (set out in 13348/97 ASIM 247). It agreed to refer this problem to the K.4 Committee on the basis of the abovementioned two documents with a view to the preparation of a programme of action in the JHA field. It also agreed to take stock of those lines of action before the informal meeting of JHA Ministers planned for the following 28 and 29 January in Birmingham.

Finally, the Presidency invited the Council (General Affairs) to adopt a position on the implications of this problem as regards the European Union's external responsibilities.

### 13. EURODAC

**(a) Draft Convention concerning the establishment of "Eurodac" for the comparison of fingerprints of applicants for asylum**

12833/97 ASIM 240

10191/3/97 ASIM 160 REV 3

The Council took note of the progress of discussions on the draft convention on the establishment of the Eurodac system; it noted the agreement of all delegations to the creation of the Eurodac system; it froze (subject, if necessary, to possible technical or drafting alterations) Articles 1, 2, 3, 5, 6, 6a, 7, 8, 13, 18, 19 and 21 of the draft convention, on which there was consensus on the part of all delegations.

As regards Article 6b, on the processing of data relating to asylum applicants that had achieved refugee status as defined in the Geneva Convention of 28 July 1951, the text resulting from the Council's conclusions is set out in 10191/3/97 ASIM 160 REV 3 COR 1.

The Austrian delegation wanted the system to be developed to include the fingerprints of illegal immigrants, but the Presidency stressed that was not at this stage feasible in that convention.

**(b) Technical specifications and financial aspects**

11729/97 ASIM 204

The Council instructed the Working Party on Eurodac to draw up the technical specifications on the basis of the additional study carried out by Bossard Consultants with a view to the invitation of tenders for the installation of the Eurodac system.

**14. Temporary protection**

12822/97 ASIM 237

The German delegation said that the question of burden sharing between the Member States was an important political question which ought to be discussed in depth. It considered the solution suggested by the European Parliament for this question a step in the right direction but not yet sufficiently practical.

The Council agreed to invite the competent Council bodies to continue their proceedings on the proposal referred to, bearing in mind, *inter alia*, the European Parliament's Opinion.

**15. Draft joint action introducing a programme of training, exchanges and cooperation in the field of asylum, immigration and crossing of external borders (Odysseus programme)**

12844/97 ASIM 241 FIN 462

The Council examined the draft Joint Action "introducing a programme of training, exchanges and cooperation in the field of asylum, immigration and crossing of external borders", entitled the "Odysseus" programme.

The Council noted that all delegations were in agreement on the objectives of the programme but that divergences had appeared regarding the means of implementation. To avoid delaying implementation of the important actions envisaged in this programme, the Council asked the competent Council bodies to examine the possibility of separating the elements of the joint action's scope, in order initially to reach agreement on a programme restricted to the fields of asylum and immigration and determine the financial allocation for that part. Subsequently, a separate instrument more specifically concerned with the area of crossing external borders could be drawn up.

**16. Other business**

The Council did not address the questions under "Other business" on the agenda.

**Re item 3: "Draft Convention on jurisdiction and the recognition and enforcement of judgments in matrimonial matters (Brussels II)"**

**a. Statement by the Italian delegation**

With regard to Article 41a of the Convention, Italy reserves the right, in respect of judgments by Portuguese ecclesiastical courts, to adopt the procedures and carry out the checks provided for in its own legal system in respect of similar judgments by ecclesiastical courts, on the basis of the agreements it has concluded with the Holy See.

**b. Statement by Finland for entry in the Council minutes**

Finland makes the following statement:

The Council confirms the following, which will also be incorporated in the explanatory report on the Convention:

1. There is no conflict between Article 3(2) of this Convention and the corresponding provisions of the Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in respect of Parental Responsibility and Measures for the Protection of Children, signed at The Hague on 19 October 1996.
2. The terms "deliberately misleading" in the statement concerning Ireland refer to facts in circumstances which are cited to establish place of residence in another Member State, as explained in the first paragraph of section 5(b) of the Presidency's overall compromise solution.