

**EUROPEAN UNION
THE COUNCIL**

**Brussels, 23 September 1999 (08.10)
(OR. f)**

6653/99

LIMITE

PV/CONS 11

JAI 19

DRAFT

MINUTES

of the 2166th Council meeting

(Justice and Home Affairs)

held in Brussels on 12 March 1999

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1. Adoption of the agenda

6303/1/99 REV 1 OJ/CONS 11 JAI 13

The Council adopted the above agenda.

2. Approval of the list of “A” items

6304/99 PTS A 9

The Council approved the list of “A” items as set out in 6304/99 PTS A 9, with the exception of item 7.

The list of documents for **items 1, 4 and 8** should read as follows:

Item 1: 12062/4/98 JUSTPEN 98 REV 4

+ **REV 5 (d)**

6280/99 JUSTPEN 8

+ COR 1 (s)

+ COR 2 (d)

+ COR 3 (dk)

6493/99 JUSTPEN 11

+ COR 1

Item 4 : 10888/98 EUROPOL 93

+ COR 1

+ COR 2

+ **COR 3 (i,nl,en,gr,es,p,fin,s)**

+ **COR 3 REV 1 (p)**

+ COR 4 (nl)

+ COR 5 (nl)

6311/99 EUROPOL 8

Item 8: 6045/99 VISA 11

+ **COR 1**

6044/99 VISA 10

+ ADD 1

Statements relating to item 8 on the list of "A" items are set out in Annex I to these minutes.

3. Europol:

– Preparations for taking up activities

The Council took note of progress made in preparations for Europol to take up its activities. The following may be noted with regard to the last outstanding acts which must enter into force before Europol can do so:

- (a) Protocol on Privileges and Immunities: the Italian delegation informed the Council that its parliamentary procedure would be completed during April, and the French delegation indicated May as the date for the completion of its ratification procedures.
- (b) Bilateral Protocols on Immunities (liaison officers): delegations gave the following indications for completion of their procedures: United Kingdom: mid-April; Italy: within ten days; Greece: as soon as possible after the consent of Parliament; Austria: in May, after the consent of Parliament; the Portuguese delegation did not give any details.

The President asked all Member States which had not yet completed their procedures to indicate possible problems in writing within ten days.

- (c) Rules of Procedure of the Joint Supervisory Body: the President indicated that as a result of bilateral contacts, progress had been achieved. On the basis of these contacts a proposal would be shortly be presented to the Permanent Representatives Committee, so that it could be forwarded to the Joint Supervisory Body. At the request of the Danish delegation, the President promised that possible problems relating to the way in which members of the Joint Supervisory Body could be dismissed would be solved in a way satisfactory to all delegations.

- **Council Decision extending Europol's mandate to deal with forgery of money and means of payment**
6314/99 EUROPOL 11
6320/99 EUROPOL 13

The Netherlands delegation said that in order to take account of concerns recently voiced in its Parliament, the following two questions had to be addressed:

- (i) the fact that the Decision extending the mandate contained no definition of forgery of money and means of payment, and
- (ii) the lack of a clear division of powers between Europol, on the one hand, and the Commission (UCLAF)/the European Central Bank, on the other.

The President concluded that these matters had to be referred back to the Permanent Representatives Committee. However, the Council agreed to allow Europol to continue to prepare for the extension of the mandate, pending the solution of these problems.

- **Extension of the mandate of the EDU Management Team**
6194/1/99 EUROPOL 6 REV 1
6313/99 EUROPOL 10

The Council welcomed a statement by the Italian delegation concerning the composition of the future Europol Directorate. Having noted political agreement on this item, the Presidency announced that it would submit a proposal to the Permanent Representatives Committee, with a view to a rapid decision by the Council.

- **Report on the activities of the EDU/Europol 1998**
6190/2/99 EUROPOL 4 REV 2
6315/99 EUROPOL 12

The Netherlands delegation made a statement which is set out in Annex II.

4. EURODAC: Draft Council act drawing up a Protocol extending the scope *ratione personae* of the Convention concerning the establishment of "Eurodac" for the comparison of the fingerprints of applicants for asylum
6324/99 EURODAC 4
+ ADD 1 REV 1

The Council

- reached political agreement on the text of the draft Protocol as set out in the Annex to 6324/99;
- agreed to "freeze" the draft Protocol, while awaiting the entry into force of the Treaty of Amsterdam;
- noted the Commission's intention, after the Treaty of Amsterdam had entered into force, to submit a proposal for a Community legislative instrument containing the provisions of the draft Protocol, taking account of the Opinion which the European Parliament would shortly deliver.

5. Convention on Mutual Legal Assistance in Criminal Matters
6195/1/99 JUSTPEN 7 REV 1
6284/99 JUSTPEN 9

The Council examined the last outstanding matters in the draft Convention, namely the interception of telecommunications during a criminal investigation, data protection and territorial scope.

The Council instructed its competent bodies to continue work on this Convention with a view to settling the few outstanding issues and securing agreement at its next meeting, in May.

6. Questions relating to the transition from the Maastricht to the Amsterdam Treaty with regard to Conventions
– **Report**

The Commission representative stated that immediately after the entry into force of the Treaty of Amsterdam, the Commission intended to forward proposals for Community acts containing the provisions of the "Brussels II" ¹ and "Service of Acts" Conventions ².

Following an exchange of views, Member States agreed to take the following action:

- Member States which needed to do so would endeavour to ratify the "Brussels II" and "Service of Acts" Conventions as soon as possible;
- Member States would no longer be able to commence or continue ratification procedures once a Community act on the subject had been adopted;
- the Council would on submission examine any proposal for a Community act incorporating the provisions of these two Conventions in accordance with the usual procedures;
- with regard to the Convention on insolvency, the Council would examine any proposal or initiative based on Article 65 which might be submitted to it after the entry into force of the above Treaty;

¹ Convention on Jurisdiction and the Recognition and Enforcement of Judgments in Matrimonial Matters.

² Convention on Jurisdiction and the Recognition and Enforcement of Judgments in Matrimonial Matters.

- the progress achieved by the ad hoc Working Party on Revision of the Brussels and Lugano Conventions would be frozen at the latest on the day on which the Amsterdam Treaty came into force, and subsequently incorporated into a draft Community act which would be submitted to the Council for adoption³.

7. Revision of the Brussels and Lugano Conventions
6382/99 JUSTCIV 35

Without prejudice to the solutions set out under item 6, the Council:

- took note of progress on the revision of the Brussels and Lugano Conventions;
- called for that work to be expedited, so that it could be completed soon, if possible before the end of the first half of 1999.

8. Information on some ongoing activities in the field of the internal market and consumer protection

– **Report**

The Council took note of an oral report from the Presidency on some ongoing work in other Council bodies, which were of interest in the field of Justice in civil matters. The Presidency referred in particular to:

- the draft Directive on combating late payment in commercial transactions, and
- the draft Directive on a Community framework for electronic signatures.

³ One delegation had reservations on this approach. In its opinion, it should be considered whether in this case Article 220 (new Article 293) remained a valid legal basis.

9. Preparation of the meeting with the CCEE and with Cyprus

The Presidency indicated that following an introduction on the fight against corruption, the Swedish, Estonian, Netherlands and Romanian delegations respectively would introduce the themes of criminal law regarding the fight against corruption in the private sector and the prevention of corruption in the public sector. The Commission would also make a statement on the topics to be addressed.

10. Definition and integration of the Schengen acquis

– Briefing by the Presidency

The Presidency reported on progress made on the definition and integration of the Schengen acquis into the European Union's legal framework, in view of the forthcoming entry into force of the Treaty of Amsterdam and the Schengen Protocol. Those provisions of the Schengen acquis on the legal basis of which no consensus could be reached, would be allocated to the third pillar.

The Presidency asked Member States to do their utmost to ensure that all preparations needed for the integration of the Schengen acquis into the European Union's legal framework were completed in time.

On this item, the Council took note of a statement by the United Kingdom Home Secretary on the intentions of the United Kingdom in respect of the application of parts of the Schengen acquis, in accordance with Article 4 of the Schengen Protocol. The statement is set out in Annex III.

Delegations welcomed this announcement and expressed the hope that the United Kingdom would gradually come to participate in all areas of the Schengen acquis.

The Irish delegation announced that, subject to Ireland's constitutional arrangements, its Government would aim to apply to participate in the same areas as the United Kingdom.

11. Other business

(a) Common standards on asylum procedures (Commission)

The Commission informed the Council that it had drawn up a working document intended to serve as a basis for political discussions both at the Council and the European Parliament. The Commission would take account of these discussions when drafting a proposal for a Community legislative act to be submitted after the Treaty of Amsterdam had entered into force.

The Netherlands delegation supported the Commission's initiative, and underlined the importance of the adoption of the relevant measures within two years following the entry into force of the Treaty of Amsterdam.

(b) Öcalan (Greece)

The Greek delegation stressed that, in the Öcalan case, efforts had to continue in order to ensure that basic human rights and the rule of law were respected. It welcomed the declaration issued in this regard by the General Affairs Council on 21 and 22 February 1999.

(c) Readmission clauses in Association Agreements (Netherlands)

The Netherlands delegation drew the Council's attention to the need to retain the standard readmission clause in the draft Association Agreement currently being negotiated between the European Union and Egypt, as provided for in the negotiating brief. This point of view was supported by several delegations.

Other delegations and the Commission considered that, given the importance of readmission, not only in the context of negotiations with Egypt but also for current and future negotiations with other third countries, the General Affairs Council should be invited to examine this question generally.

The Presidency said that it would inform the General Affairs Council of the situation.

- (d) Mutual Recognition of judicial decisions and judgments in criminal matters/Better access to justice for EU citizens (United Kingdom)

The United Kingdom delegation stated that it would present a paper on mutual recognition of judicial decisions and judgments in criminal matters and one on better access to justice for EU citizens, in preparation for the special European Council meeting in Tampere.

Re item 2 on the agenda

Council statements

1. Re Article 2(3)

"The Council states that for the purposes of Article 2(3):

- due account will be taken of United Nations Security Council Resolutions, particularly where it has condemned the entities or authorities in question, has called on all States not to recognise them and has declared their actions legally null and void;
- it will have to be determined which passports and travel documents are to be recognised as valid, in accordance with those Resolutions, under the provisions of Title VI of the Treaty on European Union with regard to the harmonisation of the conditions governing the issue of visas."

2. Re Part II of the Annex

"The Council states that, where it is proposed to amend Part II of the Annex to this Regulation as regards the inclusion of territorial entities and authorities not recognised by all the Member States, the Council will consider the specific foreign-policy aspects involved before taking its decision; in any event the recognition of passports and travel documents issued by non-recognised territorial entities and authorities is a matter for the Member States and could be the subject of a decision under Title VI."

3. Re the footnote to Part I of the Annex

- (a) "The Council states that it added the footnote to the Annex to this Regulation relating to Hong Kong Special Administrative Region passport holders pursuant to the aforementioned statement re Article 2(3)".

- (b) "Member States party to the Convention implementing the Schengen Agreement hereby state that they will maintain the status quo with regard to the visa obligation for Chinese nationals holding Hong Kong Special Administrative Region passports, unless a decision to the contrary is taken in accordance with the procedures laid down in the Convention implementing the Schengen Agreement."

4. Re Part I of the Annex

"The Council states that, in view of the special situation there, the treatment of Chinese nationals with right of abode in Macao will be determined later."

Re item 3 on the agenda

Statement by the Netherlands delegation

"On 4 December 1998, the Council and the Commission drew up an Action Plan on how best to implement the provisions of the Treaty of Amsterdam establishing an area of freedom, security and justice. As is known, this Plan was adopted by the Vienna European Council. The Netherlands delegation welcomes the fact that this Action Plan places the fight against illegal immigration networks amongst its priorities for operational collaboration in the Europol framework.

However I note, when reading the report on its activities, that a certain number of projects in this area which Europol announced for 1998 have not yet been implemented. In particular I would mention:

- the carrying out of a study of the most effective investigation methods in combating illegal immigration networks;
- the study of the multi-agency and multidisciplinary approach to combating illegal immigration networks within the Member States;
- the use of an electronic bulletin board on illegal immigration networks, allowing Member States to obtain information on working methods, routes etc.

I regret that these activities have not been implemented and I would like to underline that combating illegal immigration networks is one of Europol's priorities and should remain so in 1999."

Re item 10 on the agenda

Statement by the Home Secretary of the United Kingdom on 12 March 1999

United Kingdom participation in Schengen and free movement chapter

"Other Member States will be interested to know of the intentions of the UK about our participation in JHA matters after the entry into force of the Treaty of Amsterdam, in accordance with Article 4 of the Protocol integrating the Schengen acquis into the framework of the European Union and with the Protocol on the position of the United Kingdom and Ireland.

The UK is committed to active and effective co-operation in the JHA field. We demonstrated that during our Presidency last year. Our citizens have a common interest in ensuring that effective action is taken to combat international organised crime; we shall continue to play a full role in such EU-level cooperation. We have been playing an active part in preparation for the incorporation of Schengen and for the establishment of the new Free Movement Chapter under Amsterdam. We are also keen to assist in the development of a useful agenda for the special European Council in Tampere later this year.

We have been giving serious thought to the areas of the Schengen acquis and the measures to be adopted under Title IV in which we would wish to participate once Amsterdam comes into force. The different effects of our various Protocols influence our approach in this respect.

Our starting point is the Protocol on frontier controls to which all Member States agreed at Amsterdam. The UK Government will maintain its frontier controls, in line with that political agreement.

Subject to the Amsterdam Protocol, the UK wishes to approach participation in Schengen and the Free Movement Chapter positively.

Indeed, we are keen to engage in co-operation in all areas of present and future JHA cooperation which do not conflict with our frontiers control.

We are therefore ready to participate in law enforcement and criminal judicial cooperation derived from the Schengen provisions, including the Schengen Information System. We have been in the forefront of EU coordination in the fight against crime and drugs and we shall maintain that position. We are also interested in developing cooperation with EU partners on asylum – an EU-wide phenomenon – and in the civil judicial cooperation measures of the Free Movement Chapter.

Our intention to maintain our frontier controls has implications for our participation in the direct operation of external frontier controls. For similar reasons, enhanced visa cooperation raises difficulties for us. But within this constraint, we shall seek discussions with EU colleagues to maximise the scope for mutual operational cooperation in combating illegal immigration, without prejudice to the maintenance of our national immigration controls. We shall also look to participation in immigration policy where it does not conflict with our frontiers-based system of control.

We realise that much detailed discussion with our EU partners will be necessary in order to pave the way for cooperation in these areas. We shall shortly put forward a formal request for participation."

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