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2229th Council meeting

- JUSTICE AND HOME AFFAIRS -

Brussels, 2 December 1999

Presidents : **Mr Johannes KOSKINEN**
Minister for Justice

Mr Kari HÄKÄMIES
Minister for the Interior

of the Republic of Finland

Internet: <http://ue.eu.int/Newsroom>
E-mail: press.office@consilium.eu.int

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For further information call 285.84.15 or 285.68.08

PARTICIPANTS

The Governments of the Member States and the European Commission were represented as follows:

Belgium :

Mr Marc VERWILGHEN
Mr Antoine DUQUESNE

Minister for Justice
Minister for the Interior

Denmark :

Mr Frank JENSEN
Mr Thorkild SIMONSEN

Minister for Justice
Minister for the Interior

Germany :

Mr Otto SCHILY
Mr Hansjörg GEIGER

Federal Minister for the Interior
State Secretary, Federal Ministry of Justice

Greece :

Mr Stelios PERRAKIS
Mr. Dimitri EFSTATHIADIS

State Secretary for European Affairs
Secretary General, Ministry for Public Order

Spain :

Mr Jaime MAYOR OREJA
Ms Margarita MARISCAL de GANTE y MIRÓN

Minister for the Interior
Minister for Justice

France :

Mr Jean-Pierre CHEVENEMENT

Minister for the Interior

Ireland :

Mr Denis O'LEARY

Ambassador, Permanent Representative

Italy :

Ms Rosa JERVOLINO
Mr Giuseppe Maria AYALA

Minister for the Interior
State Secretary for Justice

Luxembourg :

Mr Nicolas SCHMIT

Ambassador, Permanent Representative

Netherlands :

Mr Job COHEN

State Secretary for Justice

Austria :

Mr Karl SCHLÖGL
Mr Nikolaus MICHALEK

Federal Minister for the Interior
Federal Minister for Justice

Portugal :

Mr Fernando GOMES
Mr António COSTA

Minister for the Interior
Minister for Justice

Finland :

Mr Johannes KOSKINEN
Mr Kari HÄKÄMIES
Ms Kirsti RISSANEN

Minister for Justice
Minister for the Interior
State Secretary for Justice

Sweden :

Ms Laila FREIVALDS
Ms Maj-Inger KLINGVALL

Minister for Justice
Minister for International Development Co-operation, Migration
and Asylum Policy

United-Kingdom :

Mr Jack STRAW
Ms Barbara ROCHE

Home Secretary
Minister of State, Home Office

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Commission :

Mr Antonio VITORINO

Member

At the beginning of the session, the Council took note of a declaration made by the Spanish Minister for the Interior, Mr MAYOR OREJA, indicating that Spain had a reservation of political nature on six different draft legal instruments on the Council's agenda with regard to their territorial scope of application (Convention on mutual legal assistance in criminal matters, Regulation on insolvency proceedings, Regulation on the Service of judicial and extra-judicial documents in civil or commercial matters, Regulation on Eurodac, negotiation mandate on a Dublin parallel agreement with Norway and Iceland, Decision concerning the UK application to participate in some of the provisions of the Schengen acquis).

Minister MAYOR OREJA stressed that bilateral contacts with the United Kingdom were underway which would hopefully solve this question in order to pave the way for these legal instruments to be adopted by the Council.

The President appealed to both Member States to find rapidly a solution to this matter in order to overcome the present deadlock on a number of draft legal instruments otherwise ready for approval by the Council.

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TAMPERE FOLLOW-UP - PREPARATION OF THE SCOREBOARD

Commissioner VITORINO informed the Council of the state of preparation of his institution's proposal for a scoreboard, as requested by the Tampere European Council, in order to keep under constant review progress made in Justice and Home Affairs.

He indicated that the Commission will table a formal proposal next spring following consultation of Member States, the European Parliament, as well as other interested bodies such as the High Commissioner for Refugees.

The Commissioner emphasised that the scoreboard will not be a new legislative proposal, but will be based on the deadlines set by the Amsterdam Treaty, the 1998 Vienna Action Plan on establishing an area of freedom, security and justice, and the Tampere European Council conclusions. It will be intended to exert pressure on areas where progress is lagging behind, in order to repeat the successful experience made with the White Paper for the Internal Market. The Commissioner pointed out, however, that while on Internal Market matters the right of initiative for legislation was limited to his institution, in the area of Justice and Home Affairs the Commission and Member States shared the right of initiative.

Welcoming the general approach of the Commission, Member States stressed the importance of broad consultation taking place ahead of the Commission's presentation of the formal proposal for the scoreboard.

The incoming Portuguese Presidency undertook to ensure that work on this matter will be taken forward speedily.

CONVENTION ON MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS

The Council achieved important progress on the draft Convention on mutual legal assistance in criminal matters, with a view to reaching final agreement on the Convention at its March session, once the opinion of the European Parliament has been delivered and examined.

It is recalled that this draft Convention is intended to supplement the basic instrument in this area, namely the 1959 Council of Europe Convention on mutual legal assistance, as well as the pertinent provisions of the 1962 Benelux Treaty. Its application would improve greatly mutual legal assistance in the EU by speeding up procedures and by providing new harmonised investigation tools in this area such as hearings by videoconference, interception, controlled deliveries, joint investigation teams etc.

Progress was made notably on the matter of interception of telecommunications, which has been blocking any progress on this Convention for over two years. In particular, a common understanding was reached on the question of the scope of the intercepting Member State's general obligation to inform the Member State in which the interception is carried out.

Given that the draft Convention is aimed to apply only to interceptions carried out in the framework of criminal proceedings, the pertinent provisions will establish the obligation to inform the Member State, in which the interception is carried out, in all situations that would fall under the general concept of criminal investigations. These provisions could not be interpreted so as to permit interceptions in situations that are not covered by the Convention, in particular interceptions undertaken for national security purposes. Those situations are covered by the general principles of the international law, which remain unaffected by the Convention.

The Council could, however, not settle two other problems relating to the interception of telecommunications. The first relates to the question of whether silence from the Member State informed of an interception carried out on its territory should mean approval or prohibition regarding the interception and the use of intercepted material. While the general approach was that silence should imply approval, two delegations took the view that it should be interpreted as a prohibition to carry out the interception or to use intercepted material.

The second problem which was not solved relates to the interception of satellite telecommunications. Under the draft Convention, Member States will be asked to ensure that satellite telecommunications operators may provide interception by the use of service providers (located in other Member States) without, however, obliging these operators to provide interception. One delegation was still of the opinion that satellite telecommunications operators should not only be allowed, but indeed be obliged, to provide interception by the use of service providers.

Moreover, the Council reached an agreement on the approach to be followed on the question of data protection. The Convention will accordingly contain provisions on this important issue whilst, however, respecting the deadline of March 2000 for establishing the Convention.

The Council also confirmed the consensus reached on the draft provisions concerning the possibility to set up joint investigation teams comprising authorities from two or more Member States, in order to carry out cross-border criminal investigations. It is recalled that these draft provisions were added to the text following the entry into force of the Amsterdam Treaty.

The Council noted that, in addition to the above-mentioned outstanding issues, the political question of the territorial scope of the draft Convention also remained to be solved.

It should be noted that the draft Convention also covers certain Schengen relevant matters and that therefore a number of its provisions will apply also to Iceland and Norway.

PROTECTION OF THE EURO AGAINST COUNTERFEITING - FRAMEWORK**DECISION**

The Council reached broad consensus on the draft Framework Decision on increasing protection by penal sanctions against counterfeiting in connection with the introduction of the euro, except for the question of liability of legal persons to which one delegation remained opposed. Before securing overall agreement, the Council will also have to examine the opinion of the European Parliament expected to be given by February 2000.

The proposal for this Framework Decision - a new legal instrument introduced by the Amsterdam treaty - was tabled by Germany last July in response to the Council Resolution of 28 May 1999 on euro counterfeiting. This Resolution called for the drawing up of a legal instrument to supplement the protection already provided for by the 1929 Convention on the Suppression of Counterfeiting Currency.

In order to supplement the 1929 Convention and also to facilitate its application, the draft Framework Decision sets out the additional offences that Member States shall make punishable by effective, proportionate and dissuasive criminal penalties. In particular, the general offences of fraudulent making or altering of currency shall be punishable by terms of imprisonment, the maximum being not less than 8 years. A full harmonisation of penalties is, however, not aimed for, given the large differences in national legislations.

Under the draft Framework Decision, Member States are asked to ensure that counterfeiting is also punishable when it relates to future banknotes and coins of the euro and is committed before 1 January 2002 and, more in general, when it relates to banknotes and coins not yet issued but designated for circulation and which are of a currency which is legal tender.

Furthermore, the draft Framework Decision contains rules on jurisdiction aimed at ensuring that counterfeiting is in general always prosecuted, independently of the nationality of the offender and the place where the offence has been committed.

As indicated above, the draft Framework Decision also establishes the liability of legal persons and sets out possible sanctions, such as the exclusion from entitlement to public benefits or aid or a judicial winding-up order.

Under the draft Framework Decision, Member States will be asked to have national legislation in force to comply with all of its provisions by 31 March 2001. The adoption of this Framework Decision - which is binding as to the result to be achieved but leaves to the national authorities the choice of forms and methods - is therefore a matter of urgency.

In a declaration annexed to the text, the Council states that the need for further measures should be examined, in particular on the cooperation between Member States, the European Central Bank and national Central Banks in the area of the fight against counterfeiting the euro.

In this context, the Council also took note of an intervention by Commissioner VITORINO indicating that his institution would come forward with further initiatives to strengthen judicial cooperation with regard to the introduction of the euro.

INSOLVENCY REGULATION

The Council reached a common understanding on the draft Regulation on insolvency proceedings - with exception of the question of its territorial scope - further to the initiative submitted by Finland and Germany on 26 May 1999. The opinions of the European Parliament and of the Economic and Social Committee will be examined as soon as they will be delivered.

The Regulation is aimed at replacing the Insolvency Proceedings Convention that was established in 1995 but never entered into force because the UK had not signed up to it. The substantive provisions of the draft Regulation reproduce entirely the content of the previous Convention. The only modifications are related to the new institutional framework of the Amsterdam Treaty.

The objective of this draft Regulation is to define common rules on cross-border insolvency proceedings - an area not covered by the 1968 Brussels I Convention ("on jurisdiction and the enforcement of judgement in civil and commercial matters") - so that these proceedings operate more efficiently and effectively for the proper functioning of the Internal Market. The application of the Regulation will also reduce transfers of assets or of judicial proceedings from one Member State to another simply to obtain a more favourable legal position.

The draft Regulation will not apply to insurance undertakings, credit institutions, investment undertakings holding funds or securities for third parties as well as collective investment undertakings, since they will be subject to special arrangements and national supervisory authorities have in these cases very wide-ranging powers of intervention.

The draft Regulation establishes that main insolvency proceedings are opened in the Member State where the debtor has the centre of his main interests. These proceedings have universal scope and are aimed at encompassing all the debtor's assets (principle of universality). However, in order to protect the diversity of interests, secondary proceedings can be opened to run in parallel in a Member State where the debtor has an establishment, but their effects will be limited to the assets located in that State. The draft Regulation therefore establishes certain exceptions to the general principle of the universal scope of insolvency proceedings.

With regard to the annexes to the draft Regulation that define in detail the scope of its application (list of national insolvency proceedings, the persons and bodies being liquidators and the procedures for winding-up proceedings), it was agreed that the Council may modify these annexes by qualified majority.

The draft Regulation will also apply both to the UK and Ireland as they have wished to take part in its adoption on the basis of their respective protocols to the Amsterdam treaty. In accordance with its protocol, Denmark will not participate. It has, however, indicated that it wishes to apply the same rules as those defined in the draft Regulation.

SERVICE OF DOCUMENTS REGULATION

The Council reached a political agreement on all provisions - except for those relating to the territorial application - of the draft Regulation concerning the service in the Member States of judicial and extra-judicial documents in civil and commercial matters. The text takes into account the opinions given by the European Parliament and the Economic and Social Committee.

The draft Regulation reproduces entirely the content of the Convention established on the same issues on 26 May 1997. The only modifications are due to adaptations to the new institutional framework of the Amsterdam Treaty. It should be noted that, in order to transform the Convention into a Community instrument, the Commission had initially tabled a proposal for a Directive.

The principal aim of the draft Regulation is to speed up and facilitate the service of documents in order to improve judicial procedures in civil matters. To this end it establishes that the transmission of documents should in general be made direct and by rapid means between local bodies designated by the Member States, hence avoiding lengthy procedures of indirect transmission via central authorities. It also provides for the use of modern transmission methods and a comprehensive, user-friendly form to accompany the document transmission. It will therefore be possible to use fax, and in the future also e-mail, provided both the State of transmission and the addressee State agree to this kind of transmission. Moreover, the application of the Regulation will introduce special rules for the translation of documents which will safeguard better the rights of the parties.

In order to ensure faster transmission of documents and legal certainty, the draft Regulation also establishes certain time limits for the service of documents and defines a common rule for the fixing of the date of service. However, the Council agreed that derogations from the general rule on the date of service may be authorised for transitional periods, according to the rules set out in the draft Regulation.

The draft Regulation establishes that the Commission will be assisted, in the adoption of implementing rules, by an advisory Committee, composed of representatives of Member States.

The draft Regulation will apply both to Ireland and the UK which have asked to participate in its adoption on the basis of their respective protocols to the Amsterdam treaty. Denmark, in accordance with its protocol, will not take part. It has, however, indicated that it wishes to apply the same rules as those defined in the draft Regulation.

ORGANISED CRIME

The Council took note of an oral report by the Presidency on "The Prevention and Control of Organised Crime: a European Union Strategy for the beginning of the new Millennium". This new Strategy is intended to follow-up on the Amsterdam Action Plan on organised crime that was drawn up in 1997 for the duration of two and a half years. It will also be based on the 1998 Vienna Action Plan on establishing an area of freedom, security and justice, and the Tampere European Council conclusions. Like the 1997 Action Plan, the new Strategy will contain political guidelines and practical recommendations for actions. The Presidency indicated that the objective was to finalise this Strategy during the Portuguese Presidency.

The Presidency also gave an oral report on the 1998 EU Organised Crime Situation Report that should be adopted at the beginning of 2000. This Report is elaborated since 1992 on a yearly basis by the Presidency in co-operation with Europol. The Presidency indicated that the working method for the elaboration of this Report should be accelerated and that information from candidate countries should also be taken into account.

EURODAC REGULATION ON COMPARISON OF FINGERPRINTS OF ASYLUM APPLICANTS AND CERTAIN OTHER ALIENS

The Council reached a political orientation on the draft Eurodac Regulation with the exception of its provisions on the territorial scope of the text. It is recalled that, following the entry into force of the Amsterdam Treaty, the Commission had tabled a proposal last July aimed at transposing into a Community instrument the texts of the "frozen" draft Eurodac Convention and Protocol on which the Council had reached agreement respectively in December 1998 and March 1999.

Eurodac will be a central data base, set up at the Commission, to which Member States shall communicate fingerprints taken from asylum applicants and certain other aliens, in order to control whether a person has already applied for asylum in another Member State. The system would contribute to a better functioning of the 1990 Dublin Convention (which determines the Member State responsible for examining an asylum application) that entered into force on 1 September 1997.

In particular, the Council reached agreement on the procedure for approving implementing measures of the Regulation (comitology question). Under the agreed procedure, certain implementing powers will be reserved for the Council, in particular those that would affect the direct responsibility of the Member States and those that would also have financial implications for the Member States. The Council will vote on the first category by qualified majority, on the second group by unanimity. All the other implementing measures will be decided upon in the framework of a regulatory committee composed of representatives from the Member States.

Commissioner VITORINO expressed his institution's disagreement with this arrangement recalling that it had proposed a regulatory committee responsible for all implementing measures.

The Council decided to reconsult the European Parliament on this arrangement, given that it substantially amended the previous text, on which the Parliament had already given its opinion on 18 November 1999.

According to the draft Regulation, fingerprints will only be taken from persons of at least 14 years of age. The draft Regulation distinguishes between asylum applicants and "certain other aliens", namely aliens apprehended in connection with the irregular crossing of an external border as well as aliens found illegally present in a Member State. While fingerprints of asylum seekers will be taken and sent to the central unit for comparison where they will be stored normally for 10 years, fingerprints of "aliens apprehended in connection with the irregular crossing of an external border" will also be taken and sent to the central unit but only for comparison with fingerprints of asylum applications transmitted subsequently. Furthermore these fingerprints can only be stored for up to two years. Finally, fingerprints of aliens found illegally present in a Member State may be communicated to the central unit with the sole purpose of controlling them with fingerprints of asylum seekers already recorded in the central data base. They cannot be stored in the central unit.

Moreover, the draft Regulation also establishes that fingerprint data will be erased under certain circumstances, such as the acquisition of citizenship of any Member State, and blocked if a person is recognised and admitted as a refugee in a Member State.

The draft Regulation contains provisions on data use, data protection security and liability and sets out the rights of the data subject as well as the role of both the national and the joint supervisory authorities.

The Regulation will apply both to Ireland and the UK, as they have notified, on the basis of their respective Protocols to the Amsterdam treaty, that they wish to take part in the adoption and application of this Regulation. Denmark will at this stage be excluded, given that, according to its Protocol, it has not the possibility to join up only to a single act in the area of asylum and migration when it is not Schengen-related, unless it concludes an intergovernmental agreement with the Community. It has, however, already indicated that it wishes to take part in the Eurodac system and that, to that end, an arrangement should be drawn up.

DUBLIN PARALLEL AGREEMENT WITH NORWAY AND ICELAND

The Council noted that, apart from the question of the territorial scope to be given to the agreement to be negotiated, there was general consensus on the remaining terms of the negotiating mandate to be given to the Commission in order to negotiate a Dublin parallel agreement with Norway and Iceland. The future agreement would extend to these two countries the rules applied by the EU Member States under the 1990 Dublin Convention. This Convention establishes the criteria and mechanisms for determining the State responsible for examining an application for asylum lodged in one of the Member States.

The Dublin parallel agreement needs to be negotiated urgently with Iceland and Norway, as it must be operational before the abolition of frontier checks with the Nordic countries, expected for the second half of the year 2000.

The Council confirmed that the agreement to be negotiated would be a Community agreement, rather than a mixed agreement.

It should be noted that the draft negotiation mandate also invites the Commission to study the possibility to enable Denmark - for which this agreement is of particular importance due to its geographical situation - to participate in its application.

ADMISSION - COMMISSION PROPOSAL ON FAMILY REUNIFICATION

Commissioner VITORINO presented to the Council a proposal for a Directive on the right to family reunification, the first Commission initiative relating to immigration since the entry into force of the Amsterdam Treaty.

This proposal, which was adopted by the Commission on 1 December 1999, aims at providing a full and balanced set of rules to offer protection for the family life of third country nationals. It recognises a right - although not absolute - to family reunification for third country nationals who reside lawfully in a Member State and hold a residence permit for at least one year, notably for the purposes of employment, self-employment, activity or study.

In their initial comments, Member States welcomed the general thrust of the proposal, although some delegations voiced concerns with regard to certain specific provisions, such as those concerning the right to family reunification of unmarried partners, including same-sex partners.

The Council mandated its competent bodies to examine the Commission proposal.

UK APPLICATION TO PARTICIPATE IN SOME OF THE PROVISIONS OF THE SCHENGEN ACQUIS

The Council noted that 14 delegations agreed on the draft Decision concerning the request of the United Kingdom of Great Britain and Northern Ireland to take part in some of the provisions of the Schengen acquis. One delegation could at this stage not accept the principle of partial participation in the Schengen Information System (SIS). Moreover, this delegation reiterated its opposition to the territorial scope of application of the draft Decision.

It is recalled that, in accordance with the Schengen Protocol to the Amsterdam treaty, the UK applied to participate in some Schengen areas, mainly police co-operation, mutual legal assistance, including the Schengen Information System (SIS), as long as its participation would be compatible with the maintenance of its national border controls. The UK will therefore not participate in the immigration control system (alerts for the purpose of refusing entry; article 96 of the Schengen Convention) of the SIS and in matters that are related to it.

The draft Decision should ensure that the UK's partial participation will not undermine the coherence of the SIS and its relation with other relevant provisions of the Schengen acquis. Financial implications will also be taken account of.

EUROPOL - FUTURE ACTIVITIES FOLLOWING TAMPERE

The Presidency informed the Council on how it intended to proceed with the implementation of the Tampere European Council conclusions relating to the future activities of Europol.

With regard to the possibility of setting up joint investigation teams, work will be aimed at finding a way to secure Europol's participation in joint teams without having to change the Europol Convention, given that such an amendment would imply long delays for the implementation of the Tampere conclusions on this point.

On the creation of a European Police Chiefs Operational Task Force, which Europol would be cooperating with, certain institutional issues need to be examined.

Work has also to be launched on the other two points relating to Europol set out in the Tampere conclusions, namely the receipt of operational data and the initiation of investigations by Europol, as well as the Unit "EUROJUST" having in particular the task of facilitating the proper coordination of national prosecuting authorities and of supporting criminal investigations in organised crime cases, notably based on Europol's analysis.

DIRECTIVE ON ELECTRONIC COMMERCE - CRIMINAL LAW ASPECTS

The Council took note of an intervention by the Swedish delegation on the criminal law aspects of the draft directive on "certain legal aspects of electronic commerce in the Internal Market".

It should be noted that the Internal Market Council will seek to achieve political agreement on its common position with regard to this draft Directive at its forthcoming session on 7 December.

The draft directive is aimed at removing barriers to the development of e-commerce in Europe and at establishing a legal framework enabling the sector to benefit from the advantages of the Internal market. In particular, it should further harmonise legal aspects concerning commercial communications (advertising, direct marketing etc), on-line conclusion of contracts, liability of intermediaries, and enforcement and implementation of the legal framework.

The Swedish Minister for Justice, Ms FREIVALDS, drew the Council's attention to the draft directive's provisions on the liability of service providers which, in her view, would restrict the possibilities to effectively combat criminal activities such as child pornography. She also underlined that criminal law aspects should be dealt with by the Justice and Home Affairs Council. Several delegations supported the intervention of the Swedish Minister.

The President recalled that this proposal for a Directive was dealt with by the Council in his composition of Ministers responsible for Internal Market matters, and concluded that improved horizontal cooperation was needed at national level among the different Ministries of Member States, when defining the governmental position.

ADOPTION OF DECISIONS DISCUSSED IN THE MIXED COMMITTEE

Following the Mixed Committee's meeting, the Council adopted formally the budgetary Decision on the SIRENE Phase II and Helpdesk budget.

With regard to the Decision on the full implementation of the Schengen acquis in Greece, on which political agreement was achieved, formal adoption will take place in a few days, once the remaining parliamentary reservation of one delegation has been lifted.

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(SCHENGEN) MIXED COMMITTEE WITH ICELAND AND NORWAY

In the margins of the Council session, the second meeting at ministerial level of the Mixed Committee was held. This Committee was set up under the Agreement with Iceland and Norway concerning the latter's association with the implementation, application and development of the Schengen acquis, which was signed on 17 May 1999. It is recalled that the first meeting took place in Luxembourg on 29 October 1999.

The meeting was chaired by Ms Sólveig PÉTURSDÓTTIR, Minister for Justice of Iceland, according to the rules of the Agreement, which establish that for the second semester of each year the chair of the Mixed Committee goes alternatively to Iceland or Norway.

Mr Bjørn SOLBAKKEN, State Secretary for Justice, represented Norway.

It is recalled that the Agreement with Iceland and Norway stems from the 1996 Luxembourg Agreement between the Schengen countries and the Nordic countries (Denmark, Finland, Sweden, Norway and Iceland) on the abolition of border controls.

– ***FULL IMPLEMENTATION OF THE SCHENGEN ACQUIS IN GREECE***

The Mixed Committee agreed that controls at internal borders between Greece and those Member States which fully apply the Schengen acquis shall be lifted as from 1 January 2000. More specifically, controls at maritime borders will be lifted fully as from 1 January 2000, whilst controls at airports will be lifted gradually where it will be technically feasible, and at the latest by 26 March 2000 which is the date set for the semestrial change of timetables at the airports.

The formal decision will be adopted within days by the Council of the EU, once the parliamentary reservation of one delegation has been lifted.

This decision will bring the number of EU countries between which internal borders have been abolished to ten. October 2000 is the target date for the abolition of internal border controls with the Nordic countries (Denmark, Finland, Iceland, Norway and Sweden).

– ***SCHENGEN INFORMATION SYSTEM "SIS 1+" - STATUS REPORT***

The President informed the Mixed Committee of the positive conclusion of the first part of the project called "SIS 1+" aimed at preventing possible problems linked to the millennium bug in the functioning of the Schengen Information System. Following the positive outcome of the last operation on 17 November 1999, the new system is now up and running to ensure a smooth passage to the year 2000.

It is recalled that the second part of the project "SIS 1+" is underway on the updating of the SIS aimed at extending the system to include the Nordic countries (Denmark, Finland, Sweden, Norway and Iceland), in view of the abolition of the frontier checks with these countries, expected to be agreed for the second half of 2000.

In addition to the above updating project of the SIS, a fundamental change of the system is envisaged within a few years in order to set up SIS II. To this end a preliminary study has already been drawn up.

– ***SIS - PREVISIONAL SIRENE PHASE II AND HELPDESK BUDGET FOR 2000***

The Mixed Committee agreed on the budget concerning the provisional SIRENE (Supplementary Information Requests for National Entries) II phase and the Helpdesk. The total expenditure for this budget amounts to EUR 2 313 035.

It is recalled that SIRENE is an information system that links the SIS central part (data base) located in Strasbourg with the national parts located in Member States.

– ***1998 REPORT ON IMPLEMENTATION OF THE SCHENGEN CONVENTION***

The Mixed Committee took note of the 1998 Annual Report on the implementation of the Schengen Convention, which was drawn up by the former German Schengen Presidency.

In its introduction, the report states that the Convention, which has been brought into force in Belgium, Germany, France, Italy, Luxembourg, the Netherlands, Austria, Portugal and Spain, but hitherto only partially in Greece, again proved its worth in 1998. The message is that the abolition of internal border checks to permit the free movement of persons in Europe is justified provided it is accompanied by efficient compensatory measures to safeguard security.

As the report underlines, evidence of the Schengen success story is given by "the measures taken to perfect external border security, the optimal use made of the SIS with its 40 000-plus terminals, the collective enforcement of the common visa arrangements, the high degree of police co-operation and the determined action taken to combat illegal immigration networks and improve mutual judicial assistance".

The chapters of the report outline the activities carried out regarding the abolition of internal border checks and the effectiveness of checks on persons at the external borders, the operation of the Schengen Information System, the movement of persons, the measures to combat drug trafficking, police co-operation as well as judicial co-operation.

– ***1998 REPORT ON IMPLEMENTATION OF THE SCHENGEN CONVENTION AT EXTERNAL FRONTIERS***

The Mixed Committee took note of this report which shows, for the first time, a complete picture of the situation regarding the area of freedom of movement without controls at the internal borders in 9 Schengen countries, following the lifting of border controls with Italy and Austria at the end of 1997.

The report underlines that 1998 was marked by a substantive rise of migratory pressure principally at land and sea borders. To address this problem, Member States made considerable efforts. The report states that, "even if the functioning of the Convention in this area is satisfactory, problems continue to arise showing the existence of legal and practical gaps which need to be resolved as soon as possible".

The report emphasises the following issues:

- the routes along which illegal immigration was particularly pronounced;
- where relevant migratory flows meet the Schengen external borders and where the focal points emerge;
- the measures taken to tackle the phenomenon and how effective they have been.

The report also contains a number of recommendations addressed to Member States both at national and at EU level, such as better exchange of information and co-operation, increased training, greater harmonisation of visa policy, swift implementation of the joint action on a uniform format for residence permits and joint negotiation of readmission agreements.

– ***VERIFICATION OF THE SCHENGEN APPLICATION IN GERMANY***

The Mixed Committee took note of a report on the verification of the application of Schengen in Germany, which was drawn up by the Schengen Standing Committee further to the mandate given by the Executive Committee in December 1998.

This is the first time that the verification is carried out in a Schengen country that applies fully the Schengen acquis. It is intended to prove the spirit of co-operation and trust among the Schengen partners rather than to be a control exercise.

The Standing Committee that drew up the report under the chair of Belgium attempted to identify the steps and ideas which may benefit also other Member States, as well as to point out existing problems or risk situations and to provide possible proposals for an optimal application of the Convention.

The report sets out some recommendations for the future functioning of the Standing Committee; it describes the security concept and strategy that Germany has developed and lists the problems that were identified.

The Standing Committee reached an overall positive conclusion on the Schengen application by Germany. It also pointed out the following areas to which more attention should be paid : relations with Switzerland, small border traffic, terminology and statistics harmonisation, use of the common handbook, airport transit visa and control of cruiseships.

– ***DETERMINATION OF THE OBLIGATIONS BETWEEN THE MEMBER STATES FOR THE READMISSION OF THIRD-COUNTRY NATIONALS***

The Finnish EU Presidency presented to the Mixed Committee its initiative with a view to adopting a regulation determining the obligations between the Member States for the re-admission of third-country nationals.

This draft regulation is intended to apply to situations where a third-country national does not fulfil, or no longer fulfils, the conditions in force for entry to, or residence on, the territory of a Member State. In such cases it is necessary to determine which Member State is responsible for dealing with the situation, given that Member States should, as a priority, return third-country nationals found illegally present on their territories to their countries of origin or to another third country which they are entitled to enter.

– ***INFORMATION ABOUT ACTS/MEASURES WHICH MAY BE SCHENGEN
RELEVANT***

Iceland and Norway were informed of the state of play of the following acts or measures that may be relevant to the application of the Schengen-related Agreement concluded with these countries on 17 May 1999:

- UK application to participate in some of the provisions of the Schengen acquis;
- negotiation mandate on Dublin parallel agreement with Norway and Iceland;
- Eurodac Regulation;
- Convention on mutual legal assistance in criminal matters.

ITEMS APPROVED WITHOUT DEBATE

JUSTICE AND HOME AFFAIRS

Europol

- Remuneration of Europol employees

The Council adopted a Decision amending the Council Act of 3 November 1998 "laying down the staff regulations applicable to Europol employees, with regard to the establishment of remuneration, pensions and other financial entitlements in euros", in order to provide for all the relative amounts to be expressed in euros.

The Council also adopted a Decision adjusting the remuneration and allowances applicable to Europol employees. In particular, the above-mentioned Council Act will be amended in order to allow for an increase of 8,5% of remunerations as from 1 July 1999.

- Budget for the year 2000

The Council adopted the Europol Budget for the year 2000 amounting to EUR 27 446 000, of which EUR 7 000 000 will be affected to the Europol Computer System (TECS). Staff will be increased by 46, reaching in 2000 a total of 185.

It is recalled that the 1999 Budget set total expenditure at EUR 18 896 000. The increase for the year 2000 is due to Europol's taking up of full activities on 1 July 1999 and to new tasks that were added to its remit, such as the fight against terrorism and money laundering.

It should be noted that an evaluation of the staffing levels and plans of Europol was commissioned, the results will be used in the preparation of the 2001 and following draft budgets.

Joint action on mutual evaluations

The Council took note of a report on the implementation of the Joint Action of 5 December 1997 establishing a mechanism for evaluating the application and implementation at national level of international undertakings in the fight against organised crime.

The first mutual evaluation exercise examined delays in the operation of mutual legal assistance and urgent requests for the seizure of assets. So far, Luxembourg, Netherlands, Ireland, Italy, Greece and Denmark were evaluated in that area.

The report contains summaries of the individual country reports including a number of specific recommendations addressed to each Member State which was evaluated, in order to improve judicial cooperation and to define best practices.

The objective is to conclude a complete round of evaluations of all Member States by the end of 2000.

Assessment of the operation of the European Judicial Network (EJN)

The Council took note of an initial assessment of the functioning of the European Judicial Network that was set up by the Joint Action of 29 June 1998 in order to improve judicial cooperation and provide for a better exchange of information in that area.

The report shows that all Member States have designated national contact points. These have held four meetings since their designation. With regard to the information to be disseminated within the EJN, several efforts have been made, including the creation of a special website containing the texts of relevant legal instruments. A pilot project in view of a telecommunications network for the contact points is also to be carried out.

A new assessment of the EJN should be undertaken towards the end of 2002.

Readmission clauses in Community agreements or mixed agreements

The Council agreed to adapt the standard readmission clauses - concerning the repatriation of persons illegally resident in a Member State - used in Community and mixed agreements. The adaptation of the clauses defined in 1995 is due to entering into force of the Amsterdam treaty under which readmission matters have become a Community competence and which empowers the Community to conclude readmission agreements.

The standard clauses, which should be included in all future Community agreements and in agreements between the EC, its Member States and third countries (mixed agreements), read as follows:

"The Council of the European Union has decided that the standard clauses set out below should be included in all future Community agreements and in agreements between the European Community, its Member States and third countries

“Article A

The European Community and State X agree to cooperate in order to prevent and control illegal immigration. To this end:

- State X agrees to readmit any of its nationals illegally present on the territory of a Member State of the European Union, upon request by the latter and without further formalities;
- and each Member State of the European Union agrees to readmit any of its nationals, as defined for Community purposes, illegally present on the territory of State X, upon request by the latter and without further formalities.

The Member States of the European Union and State X will also provide their nationals with appropriate identity documents for such purposes.

Article B

The Parties agree to conclude upon request an agreement between State X and the European Community regulating the specific obligations for State X and the Member States of the European Community for readmission, including an obligation for the readmission of nationals of other countries and stateless persons.

Article C

Pending the conclusion of the agreement with the Community referred to in Article B, State X agrees to conclude, upon request of a Member State, bilateral agreements with individual Member States of the European Community regulating the specific obligations for readmission between State X and the Member State concerned, including an obligation for the readmission of nationals of other countries and stateless persons.

Article D

The Cooperation Council shall examine what other joint efforts can be made to prevent and control illegal immigration.”

Finalisation and evaluation of the 1997 Action Plan on organised crime

The Council took note of the draft report to the Helsinki European Council on the finalisation and evaluation of the Action Plan on organised crime of 28 April 1997

The Action Plan, which was endorsed by the Amsterdam European Council, contains 15 political guidelines and 30 detailed recommendations that were to be implemented by the end of 1999. In order to take forward its implementation, a Multidisciplinary Group, composed of operational law enforcement practitioners, prosecutors and policy makers, was set up.

The draft report on the Action Plan's evaluation points to the important progress made on a number of guidelines or recommendations, such as the setting-up of the European Judicial Network, the adoption of a mutual evaluation mechanism to identify problems in the implementation of measures, adoption of a Joint Action on "Falcone", a multi-annual programme to combat organised crime, and the adoption of a Joint Action on participation in a criminal organisation.

It also indicates the recommendations on which work was carried out but which cannot be fully implemented before the end of 1999, such as the development of a common policy on financial centres and off-shore facilities, money laundering and confiscation of proceeds of crime, ratification of several EU Conventions etc.

The draft report also stresses that both the 1998 Vienna Action Plan on an area of freedom, security and justice and the Tampere European Council conclusions of last October reconfirmed the commitment of the EU to strengthen the fight against serious organised and transnational crime. Arrangements are being made for the development of a European Strategy on the prevention and control of organised crime for the beginning of the new Millennium which will specifically address the follow-up called for by the Vienna European Council and the Tampere European Council.

It should be noted that the draft report may still be updated before the European Council in order to take account of latest developments and achievements.

Draft Hague Convention on jurisdiction and the recognition and enforcement of foreign judgements - method of work

The Council agreed on a method of work to be followed with regard to the drawing up of a "Convention on Jurisdiction and the Recognition and Enforcement of Judgements in civil and commercial matters" at the Hague in the autumn of 2000.

According to this method of work, provisions on the following issues should be examined: consumer contracts, individual employment contracts, branches, multiple defendants, prohibited grounds of jurisdiction, authority of the court seized, lis-pendens and exceptional circumstances for declining jurisdiction, legal aid, damage, authentic instruments, disconnection clause, federal clauses and e-commerce.

Ratification of the Convention on the use of information technology for customs purposes

The Council took note of the state of ratification of the 1995 Convention on the use of information technology for customs purposes (CIS Convention), its 1997 Protocol on the competence of the Court of Justice to give preliminary rulings on the Convention's interpretation and the 1995 Agreement on the provisional application of the Convention.

Further to the above Agreement, the provisional application of the CIS Convention can start after eight Member States have ratified the Convention and the Agreement.

So far 9 Member States have ratified the Convention (Austria, Denmark, Spain, Finland, Greece, Italy, Portugal, Sweden and the United Kingdom), 6 Member States have ratified the Agreement on provisional application (Austria, Denmark, Finland, Greece, Sweden and the United Kingdom) and 8 Member States have ratified the Protocol on the Court of Justice (Austria, Spain, Finland, Greece, Italy, Portugal, Sweden and the United Kingdom). Hence two more Member States need to ratify the Agreement in order to allow for the provisional application of the Convention.

Measures to combat child sex tourism

The Council took note of the draft conclusions on the implementation of measures of child sex tourism which were discussed at the Youth Council on 23 November and will be adopted by the forthcoming General Affairs Council on 6 December.

The draft conclusions follow the Commission communication of 26 May 1999 on the same issue and a report on the progress achieved in the fight against sex tourism. The Commission and member States are urged to continue and to further develop appropriate initiatives to combat child sex tourism, based on a cross-pillar approach.

Legal data processing

The Council took note of a report on legal data processing work during the second half of 1999.

The report sets out work carried out on the new project to establish an integrated system of access to Community law (EUR-Lex, s.i.); developments in respect of the CELEX Community law database, the electronic dissemination of Community law, as well as the Commission Green Paper on public sector information in the information society.