

**8756/99**

**LIMITE**

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JAI 42**

**DRAFT  
MINUTES  
of the 2184<sup>th</sup> Council meeting  
(Justice and Home Affairs)**

**held in Brussels on 27 and 28 May 1999**

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1. **Adoption of the Agenda**  
doc. 8467/99 OJ/CONS 32 JAI 39

The Council adopted the above-mentioned agenda.

2. **Approval of the list of "A" Items**  
doc. 8421/99 PTS A 24  
+ ADD 1

The Council approved the "A" items as listed in docs 8421/99 PTS A 24 + ADD 1, with the exception of **item 3**.

The reference documents for items 5. and 9. should read as follows:

5. docs 7965/99 CIREFI 20 MIGR 33  
+ COR 1 (s)  
8204/99 CIREFI 23 MIGR 38  
**+ ADD 1**
9. docs 8532/99 CRIMORG 58  
8533/99 CRIMORG 59  
+ COR 1 (dk)  
**+ REV 1 (d)**

3. **Open debate<sup>(1)</sup> : The Future of the judicial system of the European Union**  
doc. 8208/99 JAI 38 JUR 178 COUR 8

The Council held an open debate on the future of the judicial system of the European Union.

Following introductory remarks by the Presidency, the President of the Court of Justice of the European Communities, Mr. Rodriguez Iglesias, presented a discussion paper drawn up by the Court of Justice and the court of First Instance set out in document 8208/99 JAI 38 JUR 178 COUR 8. The President underlined the need for a more flexible application of the Court's Rules of Procedure, including accelerated proceedings and simplified procedures. Furthermore, referring especially to the necessity to provide translations into all languages to guarantee that every citizen has the same access to deliberations and judgements without delay, the President stressed that financial means should urgently be increased in order to enable the Court to fulfill its obligations.

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<sup>(1)</sup> The open debate took place on 28 May in presence of Mr. Rodriguez Iglesias, President of the Court of Justice of the European Communities.

Commissioner Gradin informed the Council that the Commission has set up a Group of high level experts in order to discuss the necessary reforms. The Council would be kept informed of the results of the ongoing discussions before the final report would be issued.

Delegations expressed their understanding with respect to the difficulties and challenges the Court has to face, giving some preliminary comments on the discussion paper. In particular the increase of preliminary rulings resulting thereof could delay the national asylum procedures since preliminary rulings linked to asylum matters were likely to be frequent.

The President concluded that delegations agreed on the need to reflect on the solutions proposed in document 8208/99 JAI 38 JUR 178. The Court was invited to specify the proposals which could improve the system in the short run by simply amending the Rules of Procedure. As far as the medium-term and the long-term proposals were concerned, the need for an in-depth examination was underlined.

The proposals on these more extensive reforms should be examined by the Council with a view to submit appropriate proposals to the next Intergovernmental Conference.

#### **4. Eurodac : Commission proposal for a Regulation**

The Council took note of a presentation by the Commission of a proposal for a Regulation on Eurodac which had been adopted by the latter on 26 May 1999.

The Council mandated its competent bodies to examine the proposal as soon as possible with a view to reaching final agreement by the end of this year.

#### **5. Consequences of the entry into force of the Amsterdam Treaty for the conclusion of future re-admission agreements**

docs. 8265/99 MIGR 39  
8150/99 MIGR 37  
6658/99 JUR 95 ASIM 8 MIGR 13

Following a debate on the consequences of the entry into force of the Amsterdam Treaty on future re-admission agreements concluded by Member States with third States concerning repatriation of persons illegally present in a Member State, the Presidency drew the conclusions as set out in Annex I to these minutes.

6. **High Level Working Group on Asylum and Migration**  
- Report from the Presidency

The Council took note of the Presidency's report on the state of work of the High Level Group on Asylum and Migration.

7. **Kosovo : Temporary Protection for Displaced Persons**  
- Proposal from the Netherlands  
doc. 8073/1/99 ASIM 18 REV 1

The Council adopted the conclusions as set out in Annex II to these minutes.

Under this item the Commission drew the attention of the Council to the particular problem of victims of rape from Kosovo and the need to ensure that individuals having suffered from rape as an act of war and persecution should, in principle, be considered as refugees. The Commission further indicated that a conference on the issue of rape victims would be held in Vienna from 18 to 20 June in the framework of the Odysseus programme.

8. **Common Standards on Asylum Procedures : Discussion of the Commission's Working Paper**  
docs 8446/99 ASILE 18  
8443/99 ASILE 17  
8196/99 ASILE 16  
7498/99 ASILE 12 CK4 18  
6702/99 ASILE 9

The Council held a first exchange of view on the Commission's working document on common standards on asylum procedures.

All delegations welcomed the Commission's document as a useful contribution to work in this area. The debate focused on two points raised in the Commission's document, namely

- whether to proceed in this area by a more flexible step by step approach whereby certain basic principles would be binding for all Member States (minimum standards), whilst the latter would remain free to determine the details of the necessary administrative arrangements ; or to follow a stricter approach which would require all Member States to apply exactly the same procedures and hence achieve greater harmonisation in this area;
- what measures could be taken in order to speed up asylum procedures.

With regard to the first question, delegations generally supported the more flexible approach which seemed more realistic in order to make progress in the development of common asylum procedures, given the existing differences in national legislations. It was underlined by several delegations, however, that the initial effort should not be confined to reaching the minimum common denominator and that the ultimate objective must be the achievement of harmonised asylum procedures.

With regard to the question of possible ways to speed up asylum procedures, delegations reported on experiences gained at national level. They agreed that it was important to speed up asylum procedures, but also to simplify and make them more efficient while safeguarding an effective level of guarantees for the persons concerned. With regard to the specific measure suggested in the Commission's document of establishing a common approach to the « safe third country » concept (countries to which asylum applicants can be sent back without fear for their safety), several delegations voiced doubts about its applicability at Community level. It was underlined by some delegations that the use at national level of the « safe third country » concept had not brought about the expected success. Some delegations considered that a common approach with regard to manifestly unfounded applications would contribute to speeding up asylum procedures.

The Council mandated its competent bodies to continue work on the Commission's document.

## 9. **EUROPOL**

- **Report from the Presidency on the taking up of activities**  
doc. 8481/99 EUROPOL 28

The Italian delegation informed the Council that the Protocol on "Privileges and Immunities" has been ratified on 26 May 1999. The French delegation informed the Council that the notification of the ratification would be completed by 31 May 1999.

With respect to the bilateral Protocols on Immunities, the Greek, Italian and Portuguese delegations informed the Council that the national procedures have been finalised. The Austrian delegation informed the Council that the national procedure would be finalised on 2 June 1999.

The President pointed out that in order to fully implement the provisions of the Treaty of Amsterdam, EUROPOL should take up its activities as soon as possible, the aim of the Presidency still being 1 July 1999, and at the latest 1 August 1999.

- **Supplementary Budget 1999**  
doc. 7684/2/99 EUROPOL 24 REV 2

The Council agreed to ask the Management Board of EUROPOL to conclude the audit on organisation

and personnel at its meeting on 8 and 9 June 1999, and to forward it together with its conclusions to the Article 36 Committee's meeting on 14 June 1999 and subsequently to the Committee of Permanent Representatives with a view to the adoption of the supplementary budget 1999 by the Council in June of this year.

- **State of discussions on the budget for 2000**  
doc. 7685/99 EUROPOL 25

The Presidency concluded discussions, pointing out that the budget 2000 should be discussed by the Management Board on 8 and 9 June in order to submit it to the Article 36 Committee and the Committee of Permanent Representatives with a view to its adoption by the Council possibly before the end of June 1999.

#### **10. Collective evaluation of the enactment, application and effective implementation of the EU acquis by the applicant countries**

- Report  
doc. 7695/3/99 EVAL 32 ELARG 47 REV 3

The Council took note of a report by the Working Group on the operation and scope of the evaluation mechanism established under the joint action adopted on 29 June 1998.

#### **11. Integration of Schengen**

- Report from the Presidency  
docs 8520/99 SCHENGEN 54  
8562/99 SCHENGEN 56

The Council took note of the Presidency's report on the integration of the Schengen acquis into the legal framework of the European Union set out in document 8520/99 SCHENGEN 54.

The Council also took note of the United Kingdom's formal application to participate in those measures of the Schengen acquis that relate to law enforcement and criminal judicial cooperation, including the Schengen Information System. The United Kingdom delegation underlined that the United Kingdom had the intention to participate at a later stage and after further in-depth examination, in all aspects of JHA consistent with its policy on frontier controls.

Delegations welcomed the United Kingdom's application. The Spanish delegation underlined that note was taken of the formal application that proved the United Kingdom's willingness and positive attitude with respect to its participation in the development of the Schengen acquis. Bilateral consultations with the United Kingdom delegation would be continued, especially with respect to the United Kingdom's wish to extend the formal application to Gibraltar on which an in-depth examination was going on.

The Irish delegation informed the Council that a formal application would be tabled and forwarded in due course.

The Commission recalled declaration n° 45, attached to the Amsterdam Treaty, concerning the application of the Schengen acquis through the United Kingdom and Ireland.

The Council mandated the Working Group "Schengen Acquis" to examine the United Kingdom's application thoroughly; the Republic of Ireland's application would be examined by the same Group after its receipt.

## **12. Preparation of the European Council in Tampere**

- Oral report on the state of preparation

The incoming Finnish Presidency informed the Council on the state of preparation of the special European Council on Justice and Home Affairs scheduled for 15 and 16 October 1999 in Tampere.

Delegations agreed that the agenda of the meeting should be ambitious and that the meeting should provide an important impulse especially in the areas of immigration and asylum, the fight against organised crime and judicial cooperation in civil and penal matters. The French delegation availed itself of this opportunity to develop some of its ideas in these three fields.



### **13. Fight against Trafficking in Women and Violence against Women**

- Report by the Commission

The Council took note of a Commission report giving an overview of measures taken at national level in the fight against trafficking in women and violence against women. The report has been drawn up on the basis of Member States' contributions and showed that Member States were willing to take offences against women seriously. The Commission informed the Council that the programmes DAPHNE and STOP will be extended to the Central and Eastern European Countries.

Member States which had not yet submitted their national contributions, were asked to forward them urgently with a view to the finalisation of the report in due course.

The incoming Finnish Presidency welcomed the report and informed the Council that Finland intended to further develop measures in this area.

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

doc. 8560/99 JUSTPEN 39

The Council examined three issues relating to the problem of interception of telecommunications.

With respect to the "remote approach" concerning the interception of satellite telecommunications, the French delegation lifted its reservation whilst the Italian delegation maintained its reservation.

The Council could not reach consensus with respect to Article 13 (3) c) relating to the use of already intercepted material. As far as Article 2 a) on the applicability of the provisions on interception to all criminal investigations was concerned, the United Kingdom delegation suggested that further work should be undertaken with a view to achieving agreement.

The Council agreed to request the Article 36 Committee to examine these questions with a view to reaching a solution acceptable to all Member States.

**15. Draft Council Resolution on increasing protection by penal sanctions against counterfeiting in connection with the introduction of the euro**

doc.8331/99 JUSTPEN 35

The Council adopted the Resolution on increasing protection by penal sanctions against counterfeiting in connection with the introduction of the euro.

**16. Revision of the Brussels Convention of 1968 and the Lugano Convention of 1988**

docs. 7700/99 JUSTCIV 60  
+ COR 1 (f,d,i,nl,dk,gr,es,p,fi,s)  
6293/1/99 JUSTCIV 33 REV 1

The Council confirmed the agreement reached at expert level on the revision of both the 1968 Brussels Convention and the 1988 Lugano Convention.

The Commission informed the Council that a draft Community instrument under the new provisions of the Amsterdam Treaty, which would fully reflect the texts agreed by the Council, would be submitted in due course.

With respect to the ongoing negotiations on a worldwide Exequatur Convention aimed at covering similar areas at an international level, the Commission informed delegations that a recommendation for a decision of the Council relating to a common Community approach with regard to these negotiations has been approved by the Commission and will be submitted to the Council for consideration.

**17. Presentation by the Commission of:**

- **a proposal for a Council Regulation (EC) on jurisdiction and recognition and enforcement of judgments in matrimonial matters and in matters of parental responsibility for joint children (Brussels II)**
- **a proposal for an Council Directive on the service in the Member States of the European Union of judicial and extrajudicial documents in civil or commercial matters (Service of documents)**

The Council took note of two Commission proposals, a draft Regulation on jurisdiction and recognition and enforcement of judgments in matrimonial matters and in matters of parental responsibility for joint children (Brussels II) and a draft Directive on the service in the Member States of the European Union of judicial and extrajudicial documents in civil or commercial matters (Service of documents). Both proposals have been adopted by the Commission on 4 May 1999 on the basis of the new provisions of the Amsterdam Treaty on judicial cooperation in civil law. Both texts reproduce the substance of the two Conventions, subject to the adaptations required by the new institutional framework.

The Commission expressed the hope that the United Kingdom and Ireland would decide to accede to

these legal instruments and that the rules could be extended to Denmark, fully respecting its special position.

The United Kingdom and Irish delegations indicated that they had not yet taken a final decision as to their participation in civil law cooperation. The Danish delegation informed the Council that it would continue the national ratification procedures of the Conventions. It wished however to take part in negotiations relating to the new Community instruments.

A delegation stressed that it might be more appropriate to adopt the Community instrument on the service of documents in the legal form of a regulation.

The incoming Finnish Presidency expressed its intention to reach final agreement if possible on both proposals before the end of the year.

#### **18. Joint German and Finnish initiative for a Council Regulation (EC) on Insolvency Proceedings**

- Presentation  
doc.8195/99 JUSTCIV 78

The Council took note of an initiative for a Regulation on insolvency proceedings, tabled by Germany and Finland, based on the provisions of the Amsterdam treaty on judicial cooperation in civil matters.

The Finnish and German delegations explained that the purpose of their initiative was to establish a binding Community instrument to improve and speed up insolvency proceedings with cross-border implications. The proposal reproduced the content of the Convention on Insolvency Proceedings which has not been signed by all Member States.

The Presidency appealed to the delegations of United Kingdom and Ireland to accede to the legal instrument, and to the delegation of Denmark to enable an application of this instrument by Denmark, in order to improve the functioning of the Internal Market.

## **19. Any Other Business**

The Council took note of a Commission communication on an EU Action Plan to combat drugs adopted by the Commission on 26 May 1999. The Action Plan was aimed at continuing the present strategy, but focusing also on new challenges such as synthetic drugs.

It was recalled that the new Action Plan had to be adopted by the Council before the end of the year in order to replace the current one which expires at the end of 1999.

**Re. item 5. on the agenda**

**CONCLUSIONS**

- "1. The Community objectives in the field of immigration policy include the repatriation of persons residing unlawfully in a Member State (Article 63(3) of the EC Treaty). Readmission agreements constitute a valuable instrument of an active expulsion policy. The Council will in suitable cases authorise the Commission to conduct negotiations with third States on readmission agreements.
  
2. However, Community readmission agreements are not, generally speaking, indissolubly linked with the achievement of the Community objective of "repatriation of illegal residents". Whether this is so must be assessed in each individual cases. This also applies to the question of whether distortions can arise for other Member States through a Member State's bilateral readmission agreement with a third State.
  
3. The Community's responsibility with regard to the conclusion of readmission agreements is therefore not exclusive. A Member State can continue to conclude readmission agreements with third States provided that the Community has not concluded an agreement with the third State concerned or has not concluded a mandate for negotiating such an agreement. In individual cases Member States may also conclude bilateral agreements after the conclusion of a Community agreement or after the opening of negotiations, for instance where the Community agreement or the negotiating mandate contains only general statements on readmission but one or more Member States require more detailed arrangements on the matter. The Member States may no longer conclude agreements if these might be detrimental to existing Community agreements."

Re. item 7. on the agenda

CONCLUSIONS CONCERNING DISPLACED PERSONS FROM KOSOVO

- “1. The Council remains deeply concerned about the humanitarian consequences of the crisis in Kosovo, which continues to result in hundreds of thousands of persons from this region being displaced.
2. The Council recalls that at its special meeting in Luxembourg on 7 April 1999 it was agreed that people displaced from Kosovo were in need of effective protection and that such protection should be provided as extensively as possible in the region, in order to facilitate their return to their homes. In this context the Council welcomes the readiness of Albania to take in displaced Kosovars from other parts of the region, readiness of great importance, which all parties concerned have to take into account insofar as the reception of refugees in the region itself must be considered before any other alternative. Furthermore, it was recognised that it might prove necessary to afford displaced persons protection and assistance outside their region of origin on a temporary basis for humanitarian reasons and to avoid destabilising individual host countries in the region of origin.
3. Since that meeting the Council notes with approval that, complementary to a major effort of assistance of the Community and Member States in the region where the vast majority of persons have been afforded protection, Member States have responded to the requests of UNHCR especially following its appeal of 30 April 1999 for assistance affording protection to displaced persons from Kosovo, both in the region and through its humanitarian evacuation programme.
4. The Council emphasises the need for closer co-operation and co-ordination to ensure that the requirements of UNHCR continue to be met and that displaced persons are afforded the most appropriate assistance according to their circumstances.
5. The Council recognises a continued and even increased need to provide temporary protection to displaced persons from Kosovo and welcomes the willingness of Member States to continue to do so positively and promptly, taking into account assessments of UNHCR as well as Member States' ability to receive displaced persons and their wider commitments to providing support in the region.
6. The Council supports the objective of providing equitable levels of protection and social benefits in all Member States in accordance with their respective national legislations, for example, the residence in the host Member State for at least the duration of the temporary protection arrangements; appropriate accommodation or means to obtain such accommodation; access to public education, social and medical

services; appropriate information on their rights and obligations in their own language and in the language of the receiving country. Beneficiaries shall also have access to the labour market if national legislation so provides.

However, temporary protection may be refused to any person with respect to whom there are serious reasons for considering that he has committed a crime against peace, a war crime or a crime against humanity or with respect to whom one of the other grounds for exclusion mentioned in Article 1 F of the Geneva Convention would apply.

7. The Council supports the principle that persons should be evacuated out of the region temporarily only if they are willing to leave for the Member State which is willing to receive them. Priority should be given to the protection of particularly vulnerable groups and those in special need of protection. Family unity should be maintained wherever possible. The Council notes the important role of UNHCR in collecting the essential information necessary to facilitate the voluntary evacuation of such persons.
8. The Council agrees the importance of retaining a flexible approach to responding to the changing situation in the region, which the Council and the Commission will keep under review.
9. If necessary the Council will meet, in order to facilitate further consideration of Member States' responses to the crisis, in particular in cases of imbalance between the needs on the one hand and the means and resources that the Community and its Member States have made available to respond to those needs on the other, taking into account the assessments of UNHCR.
10. In accordance with the conclusions of the European Council in Vienna, the Council emphasises the need for comprehensive solutions as regards temporary protection of displaced persons.

11. The Council recalls that, in accordance with the objectives of the Community as they result from the Treaty of Amsterdam, the European Community and its Member States should develop minimum standards for giving temporary protection to displaced persons from third countries who cannot return to their country of origin and for persons who otherwise need international protection.
12. The Council invites the Commission and Member States to draw on the experience of their response of the Kosovo crisis in drawing up measures in accordance with the TEC.”