

1771st Council meeting
- JUSTICE AND HOME AFFAIRS -

Luxembourg, 20 June 1994

Presidents: **Mr Stelios PAPATHEMELIS**
 Minister for Public Order
 of the Hellenic Republic

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

Belgium

Mr Louis TOBBACK Minister for the Interior
Mr Melchior WATHELET Minister for Justice

Denmark

Mrs Birte WEISS Minister for the Interior

Germany

Mr Manfred KANTHER Minister for the Interior
Mrs Sabine LEUTHEUSER-SCHNARRENBARGER Minister for Justice
Mr Kurt SCHELTER State Secretary, Ministry of the Interior
Mr Alwin ZIEL Minister for the Interior, Brandenburg

Greece

Mr Stelios PAPATHEMELIS Minister for Public Order
Mr Constantin GEITONAS State Secretary for Public Order

Spain

Mr Alberto BELLOCH JULVE Minister for Justice and the Interior

France

Mr Daniel HOEFFEL Minister attached to the Minister for the Interior

Ireland

Mrs Máire GEORGHEGAN-QUINN Minister for Justice

Italy

Mr Roberto MARONI Minister for the Interior
Mr Alfredo BIONDI Minister for Justice

Luxembourg

Mr Marc FISCHBACH Minister for Justice

Netherlands

Mr A. KOSTO Minister for Justice

Portugal

Mr Manuel DIAS LOUREIRO Minister for the Interior
Mr Álvaro LABORINHO LÚCIO Minister for Justice

United Kingdom

Mr Charles WARDLE Parliamentary Under-Secretary of State, Home Office

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Commission

Mr Pádraig FLYNN Member
Mr Peter SCHMIDHUBER Member

ADMISSION OF THIRD-COUNTRY NATIONALS FOR EMPLOYMENT

The Council adopted the Resolution on limitations on admission of third-country nationals to the Member States for employment (see Annex).

IMMIGRATION AND ASYLUM - CONCLUSIONS ON THE COMMISSION COMMUNICATION

The Council:

- expresses its gratitude for the Commission communication, which has the great merit of encompassing the various aspects of immigration and asylum policies;
- notes that the various Chapters of the Commission communication have been discussed by the General Affairs Council, the Social Affairs Council, the Development Council and, in accordance with the procedural decisions taken at its meeting on 23 March 1994, the preparatory bodies for the Justice and Home Affairs Council;
- recalls the exchange of views at the informal meeting of the Ministers for Home Affairs in Thessaloniki on 6 and 7 May 1994;
- reiterates the importance it attaches to the action plan and the priority work programme for 1994 which were adopted at the end of 1993;
- calls upon the competent bodies to examine, at the time of preparation of a new work programme, the desirability of including in it the topics in that communication which come under Title VI of the TEU but which are not included in the priority work programme for 1994.

IMPLEMENTATION OF EURODAC

At their meeting on 30 November and 1 December 1992, Ministers with responsibility for immigration decided to set in hand a study of user needs and requirements for a fingerprinting system for asylum applicants. Such a system is in operation in a number of Member States, making it possible to cut out multiple applications. The Council selected a consultant to assist with that study. The final decision to set up such a Eurodac system will be taken in the light of the study's findings.

EDU/EUROPOL

The Council decided to appoint Mr Jürgen STORBECK as co-ordinator of the Europol Drugs Unit with effect from 1 July 1994. Mr STORBECK is already acting as caretaker co-ordinator.

The Council also decided to extend the term of office of Mr Willy BRUGGEMANN as caretaker deputy co-ordinator until the end of 1994.

In addition the Council agreed to the EDU budget for 1995, amounting to ECU 3,7 million.

ESTABLISHMENT OF EUROPOL - PROGRESS REPORT ON THE DRAFT CONVENTION

The Council noted that work had progressed well on the Convention's provisions determining inter alia Europol's objectives and tasks, the role of national units and Europol's internal organization.

Discussions had produced the broad outline of the system architecture and of the rules to be laid down on data protection. The precise wording of the relevant Articles must now be drawn up in order for work to be completed on schedule, i.e. by autumn 1994.

At this meeting, the Council gave particular consideration to two major issues still to be resolved:

- the manner in which terrorism should be included in the Convention's provisions alongside anti-drugs action;
- direct access for the German Länder to the central system for standardized data, besides the federal unit.

The Council found that there seemed to be a link between these two issues, as well as those concerning the role of liaison officers and agreements with third countries, given the division of responsibilities between national and regional bodies, in particular the Länder in Germany. It instructed the Permanent Representatives Committee and the Article K.4 Committee to expedite discussions with a view to submitting to it arrangements that were satisfactory to all delegations.

USE OF INFORMATION TECHNOLOGY FOR CUSTOMS PURPOSES - DRAFT CONVENTION

The Council considered the main issues still outstanding with regard to this Convention, in particular the role of the Court of Justice and the question of consulting the European Parliament. These issues also arose in connection with the Convention establishing a European Information System (EIS), the next item on the agenda.

All delegations acknowledged the need for proper judicial review under these Conventions, but several Member States had objections at this stage to the Court of Justice being entrusted with the task, while others urged that it should be for the sake of the consistency of the Union's institutional system under the Treaty on European Union and in order to ensure that acts adopted by the Commission pursuant to the Convention were also subject to review. It should be noted in particular that, in parallel with the Convention, a Community Regulation is to deal with the use of information technology within the Community's sphere of competence ⁽¹⁾. In that context the Court's jurisdiction is self-evident.

As regards consultation of the European Parliament, the Council discussed how to implement Article K.6, which states that: "The Presidency shall consult the European Parliament on the principal aspects of activities in the areas [of Justice and Home Affairs] and shall ensure that the views of the European Parliament are duly taken into consideration."

In conclusion it was agreed that the incoming Presidency would prepare a specific information note for Parliament on these matters, outlining the main aspects, and that it would hold a discussion on them

(1) Regulation on mutual assistance between the administrative authorities of the Member States and co-operation between the latter and the Commission to ensure the correct application of the law on customs or agricultural matters.

with the relevant Parliament committee.

The Council instructed the Permanent Representatives Committee and the Article K.4 Committee to press ahead with discussions in order to come to a conclusion on the Convention as swiftly as possible.

DRAFT CONVENTION ESTABLISHING A EUROPEAN INFORMATION SYSTEM (EIS)

For this Convention, apart from the issues outlined above (see page 6), the role of the Executive Committee in relation to that of the Council still needed to be clarified, in particular. A number of specific points are also still to be settled; for instance, it has to be ensured that the EIS is compatible with the Schengen Information System.

It should be noted that the joint information system to be established by the EIS Convention is designed to enable the authorities designated by Member States of the Union to have access to reports on persons and objects for the purposes of border controls and other police and customs checks. It is directly linked to a draft Convention on external frontiers, discussions on which have resumed at the initiative of the Commission under Article K.3 of the Treaty.

In conclusion the Council instructed the Permanent Representatives Committee and the Article K.4 Committee to expedite discussions on all of the issues still outstanding as regards this important Convention with a view to reaching a swift conclusion.

COMBATING DRUGS - ACTION PLAN PROPOSED BY THE COMMISSION

The Council took note of the presentation by Commissioner FLYNN of the EU action plan proposed by the Commission to combat drugs. It instructed the Permanent Representatives Committee to arrange for discussion of the plan and asked to be kept regularly informed of the progress of proceedings.

RELATIONS WITH THIRD COUNTRIES

The Council evolved guidelines for the organization of relations with third countries in the field of Justice and Home Affairs, as regards the countries with which, arrangements by means of which and topics on which such relations should be developed.

The Council instructed the Permanent Representatives Committee, assisted by the Article K.4 Committee, to give the matter further consideration so that the Council could come to a final conclusion at its meeting due to be held in late 1994.

COMBATING FRAUD

The Council took note of an interim report from the Presidency on legal protection of the Community's financial interests and noted that discussions on the Delmas-Marty report containing a comparative study of laws, regulations and administrative provisions applicable to fraud against the Union's budget had been substantially completed.

In addition the Council heard a statement by Commissioner SCHMIDHUBER presenting the new proposals approved by the Commission on 15 June concerning legal protection of the Community's financial interests, involving more specifically:

- a proposal for a Regulation dealing with administrative penalties, in order to make them generally applicable and more effective;
- submission of a draft Convention, under Title VI, so as also to take action under criminal law.

The Council instructed the Permanent Representatives Committee and the Article K.4 Committee to continue discussions on the basis of the draft joint action proposed by the United Kingdom and of the Commission proposals.

The Council asked those preparatory bodies to submit a progress report to it by the end of 1994.

EXTENSION OF THE BRUSSELS CONVENTION TO MATTERS OF FAMILY AND SUCCESSION LAW

At the European Council meeting on 10 and 11 December 1993, the possibility of extending the scope of the Brussels Convention (of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters) to matters of family and succession law was considered. Preparatory discussions showed that delegations would prefer to draw up a specific Convention in this field which would, however, follow the principles and general approach of the Brussels Convention.

The Council took note of the state of play and asked the Article K.4 Committee to press ahead with discussions.

Those discussions will deal, as a first stage, with divorce, legal separation, marriage (existence, annulment and effects) and related matters concerning matrimonial property and, as a second stage, with other aspects of family law, in particular custody of children.

EXTRADITION

The Council heard an oral report by the Presidency on progress in the field of extradition, covering improvements which could be envisaged as regards both substantive conditions and extradition procedures; it noted that a first stage of proceedings had been completed.

It will be recalled that the European Council meeting in Brussels decided that extradition formed one of the priorities for work in 1994 under the third pillar.

In conclusion the Council instructed the Permanent Representatives Committee, with the assistance of the Article K.4 Committee, to prepare specific drafts covering the various aspects contained in the interim report of November 1993.

RESOLUTION ON LIMITATIONS ON ADMISSION OF THIRD-COUNTRY NATIONALS TO THE MEMBER STATES FOR EMPLOYMENT

A. GENERAL CONSIDERATIONS ON POLICY

- (i) The Council recalls that, in the report adopted by the European Council held in Maastricht in 1991, priority was given to the harmonization of policies on admission for work as an employed or self-employed person, although it was emphasized that these policies should of necessity be restrictive.
- (ii) The Council acknowledges the contribution of migrant workers to the economic development of their respective host countries. At present, however, no Member State is pursuing an active immigration policy. All States have, on the contrary, curtailed the possibility of permanent legal immigration for economic, social and thus political reasons. Admission for temporary employment may therefore be considered only as a very narrow exception.
- (iii) The Council recognizes that the present high levels of unemployment in the Member States increase the need to bring Community employment preference properly into practice by making full use of the EURES system to improve the transparency of the labour markets and facilitate placement within the European Community. The Council further recognizes that the provisions of the EC Treaty and the EEA Agreement enable job vacancies to be filled as far as possible by nationals of other Member States or of EFTA countries which are parties to the EEA Agreement.
- (iv) The Council agreed not to regulate via this Resolution the issue of third-country nationals lawfully resident on a permanent basis in the territory of a Member State, but who have no right of admission and residence in another Member State.

It agreed to examine the matter at a later date.

- (v) Member States reserve the right to allow, in accordance with their national law, the spouse and dependent children to accompany persons admitted in accordance with this Resolution.

- (vi) In the light of these considerations, the Council resolves that the present restrictive measures should be continued and where necessary reinforced as regards the admission of third-country nationals for employment. To this end, the Council agrees that the national policies of Member States in respect of third-country nationals seeking admission to or permission to remain in their territories for employment should be governed by the principles set out below, which may not be relaxed by Member States in their national legislation. It agrees to have regard to these principles in any proposals for the revision of national legislation. The Member States will further endeavour to seek to ensure by 1 January 1996 that national legislation is in conformity with them. The principles are not legally binding on the Member States, and do not afford a ground for action by individual workers or employers.

B. PERSONS TO WHOM THIS RESOLUTION DOES NOT APPLY

The harmonization principles do not apply to:

- persons who have right of free movement under Community law, i.e. nationals of Member States, nationals of EFTA countries parties to the Agreement on the European Economic Area and members of their families;
- third-country nationals who have been allowed admission for the purpose of family reunification to join nationals of a Member State or of a third country resident in the Member State concerned;
- third-country nationals whose access to employment is covered by rights stemming from agreements governed by Community law concluded with third countries;
- persons undertaking casual work in the course of youth exchange or youth mobility schemes, including "au pairs";
- persons entering Member States in order to pursue economic activities as self-employed persons or to set up and/or manage a business/undertaking which they effectively control. Such persons will be governed by the principles to be set out in a draft Resolution covering the self-employed;
- persons who are lawfully present in a Member State as:

- = refugees under the terms of the Geneva Convention;
- = applicants for asylum;
- = third-country nationals admitted for asylum;
- displaced persons who are temporarily admitted;
- persons exceptionally allowed to stay on humanitarian grounds.

C. PRINCIPLES GOVERNING MEMBER STATES' POLICIES

(i) General criteria

- Member States will refuse entry to their territories of third-country nationals for the purpose of employment;
- Member States will consider requests for admission to their territories for the purpose of employment only where vacancies in a Member State cannot be filled by national and Community manpower or by non-Community manpower lawfully resident on a permanent basis in that Member State and already forming part of the Member State's regular labour market. In this context they will apply the procedure laid down in Part II of Regulation No 1612/68, as amended by Regulation No 2434/92, and in the light of Commission Decision No 93/569/EEC on the implementing of the Regulation, in particular with regard to Article 15(16);
- without prejudice to the application of the above two criteria, third-country nationals may, if necessary, be admitted on a temporary basis and for a specific duration to the territory of a Member State for the purpose of employment where:
 - = such an offer is made to a named worker or named employee of a service provider and is of a special nature in view of the requirement of specialist qualifications (professional qualifications, experience, etc.);
 - = an employer offers named workers vacancies only where the competent

authorities consider, if appropriate, that the grounds adduced by the employer, including the nature of the qualifications required, are justified in view of a temporary manpower shortage on the national or Community labour market which significantly affects the operation of the undertaking or the employer himself;

= vacancies are offered to:

- . seasonal workers, whose numbers are strictly controlled on admission to the territory of the Member States of the European Community and who undertake well-defined jobs, normally fulfilling a traditional need in the Community country concerned. Member States will restrict the admission of these workers to cases where there is no reason to believe that the persons concerned will seek to stay within their territory on a permanent basis;
- . trainees;
- . frontier workers;

= the persons concerned are intra-corporate transferees being transferred temporarily by their company as key personnel.

(ii) Procedure for admission for employment

A third-country national will not be admitted for employment unless prior authorization has been given for him to take up employment in the territory of the Member State concerned. Such prior authorization may be in the form of a work permit issued either to the employer or to the employee.

In addition, third-country nationals must also be in possession of any necessary visa or, if the Member State concerned so requires, of a residence permit.

(iii) Restrictions as to the scope of employment

Initial authorization for employment will normally be restricted to employment in a specific job with a specified employer.

(iv) **Restrictions as to the period of admission for employment**

A seasonal worker will be admitted for a maximum of six months in any twelve-month period, and must remain outside the territories of the Member States for a period of at least six months before being readmitted for employment.

Trainees will be admitted for a maximum period of one year in the first instance. This period may be fixed at more than a year and extended exclusively for the time needed to obtain a professional qualification recognized by the Member State concerned in the sphere of their activity.

Other third-country nationals admitted to the territories of the Member States for employment will only be admitted for a period not exceeding four years in the first instance.

(v) **Applications to extend a stay for the purpose of employment**

A person already present in the territory of a Member State as a visitor or student will not in principle be permitted to extend his stay for the purpose of taking or seeking employment. Such persons must return to their own countries on conclusion of their visit or studies.

In principle a person admitted as a trainee or service provider or employee of a service provider will not be permitted to extend his stay in authorized employment except in order to complete the training or activity under contract for which he was admitted.

A seasonal worker will not be permitted to extend his stay for the purpose of taking employment of a different type. An extension of the period of his stay may be authorized to allow him to complete the work for which the original authorization was granted. However, the total length of his stay may not exceed six months in any twelve-month period.

Other workers may be permitted to extend their period of stay in authorized employment, but only if the criteria originally applied to the decision on whether to admit them for authorized employment continue to be met, in any event when the first extension is granted.

The Member States will examine the desirability of issuing a permanent residence permit to third-country nationals who have had restrictions on their employment lifted.

(vi) Business visitors

Nothing in these principles prevents a Member State from admitting as workers third-country nationals not residing in the territory of a Member State who are seeking entry in particular to:

- negotiate for the supply of goods or services;
- deliver goods or assemble machinery manufactured in a third country as part of a supply contract,

provided that such persons will be dealing only with businesses in the territory of the Member State and not with the general public and that any one visit and possibly the work permit does not exceed six months.

(vii) Third countries with close links with a Member State

Nothing in these principles prevents a Member State from continuing to admit third-country nationals to its territory for the purpose of employment pursuant to arrangements concluded by that Member State by the date of adoption of this Resolution for nationals of a third country with which it has especially close links.

The Member States will undertake as soon as possible to renegotiate such arrangements in accordance with the terms of this Resolution.

Where these arrangements concern the employees of a service provider, the Member States undertake to examine them in the spirit of this Resolution within a reasonable period of time not exceeding three years and to arrive at an assessment.

When carrying out this examination, account should be taken of the economic development of the States with which the Member States concluded the agreements in question.

The above provisions do not apply to arrangements covering employment of persons for instruction and vocational training purposes.

DEFINITIONS

"trainees" means workers whose presence in the territory of a Member State is strictly limited in duration and closely connected with increasing their skills and qualifications in their chosen profession before returning to their own countries to pursue their careers;

"seasonal workers" means workers who are resident in a third country but are employed in an activity dependent on the rhythm of the seasons in the territory of a Member State on the basis of a contract for a specified period and for specific employment;

"frontier workers" means workers who are employed in the frontier zone of a Member State but who return each day or at least once a week to the frontier zone of a neighbouring country in which they reside and of which they are nationals;

"intra-corporate transferee": a natural person working within a legal person, other than a non-profit making organization, established in the territory of a WTO member, and being temporarily transferred in the context of the provision of a service through commercial presence in the territory of a Member State of the Communities; the legal persons concerned must have their principal place of business in the territory of a WTO member other than the Communities and their Member States and the transfer must be to an establishment (office, branch or subsidiary) of that legal person, effectively providing like services in the territory of a Member State to which the EEC Treaty applies. In Italy, "intra-corporate transferee" is defined as a natural person working within a legal person constituted as an SpA (joint stock company) or an Srl (capital stock company with limited liability).

OTHER JHA DECISIONS

(adopted unanimously, without discussion, save otherwise indicated)

Asylum policy - application of Article K.9 of the Treaty

The Council recorded final agreement (*) on the following conclusions concerning the possible application of Article K.9 of the Treaty on European Union to asylum policy:

"The Council noted the progress made in asylum policy co-operation in recent years on the basis, in particular, of the programme approved by the Maastricht European Council.

Aware of the need to intensify such co-operation, it agreed to implement as soon as possible the new instruments available to it under the Treaty on European Union. They will make it possible to improve the effectiveness of the measures adopted in the framework of the Union in implementation of the priority programmes to be drawn up.

The Council took cognizance of the Commission report on the application of Article K.9 to asylum policy, as provided for in paragraph 2 of the declaration contained in the Final Act of the Treaty on European Union.

The Council noted that, in the Commission's view, application of Article K.9 would offer certain advantages. It considers, however, like the Commission, that the time is not yet right to propose such application so soon after the entry into force of the TEU. Nevertheless, it believes that it might be advisable to reconsider this matter at a later date in the light of experience and by the end of 1995 at the latest."

Implementation of the Dublin Convention

The Council finally approved (*):

- the text on the way in which evidence is used to determine the State responsible for examining an asylum application, and
- the form of a laissez-passer for the transfer of an asylum applicant from one Member State to another.

(*) Agreed on in principle at the JHA meeting on 29 and 30 November 1993, but still subject then to reservations since withdrawn.

Immigration and asylum policy

The Council:

- took note of a progress report on the programme on asylum adopted at Maastricht in 1991;
- agreed to the standard form for determining the State responsible for examining an application for asylum;
- approved a list of honorary consuls already empowered to issue visas who, as a transitional measure, will be empowered to issue uniform visas (viz. certain honorary consuls of Denmark and the Netherlands who are to qualify for this exemption from the rule precluding honorary consuls from having the power to issue uniform visas).

CIREA activities

The Council finally approved (*):

- guidelines for joint reports on the situation in third countries from which asylum seekers come;
- the procedure for drawing up reports in connection with joint assessments of the situation in third countries and for the circulation of such reports within the CIREA framework;
- the second report on CIREA's activities.

The fight against trade in human beings

The Council formally approved (*) the document on the fight against trade in human beings.

(*) Agreed to in principle at the JHA meeting on 29 and 30 November 1993, but still subject then to reservations since withdrawn.

Assessment of the terrorist threat

The Council agreed to a summary document relating to the internal and external terrorist threat to Member States of the Union, together with a detailed report on such matters.

Money laundering

The Council agreed to the interim report on money laundering on the understanding that it would be receiving from the Commission, by the end of the year, a final report as provided for in the 1994 priority work programme.

Electronic dissemination of Community law

The Council adopted a Resolution on the electronic dissemination of Community law and national implementing laws and on improved access conditions.

OTHER DECISIONS

Special measures for ACP banana producers

The Council adopted by a qualified majority (with the Belgian, German and Netherlands delegations voting against) the common position on a draft Regulation establishing a special system of assistance to traditional ACP suppliers of bananas (vis.: Belize, Cameroon, Cape Verde, Côte d'Ivoire, Dominica, Grenada, Jamaica, Madagascar, Saint Lucia, Saint Vincent and the Grenadines, Somalia and Suriname).

The purpose of the Regulation, due to last for three years, is to grant technical and financial assistance to traditional ACP suppliers in order to help them adjust to the new market conditions brought about by the establishment of the common organization of the market in bananas since 1 July 1993.

The technical and financial assistance is designed to contribute to the carrying-out of programmes in the banana sector aimed in particular at the improvement of quality and of production, distribution or marketing methods for ACP bananas, in response to Community market conditions.

There is also provision for traditional ACP suppliers to receive income support to offset any reduction in income from banana exports to the Community following the establishment of the common market organization.

Financial commitments under the Regulation should be additional to those under the ACP-EEC Convention. The cost is put at up to ECU 60 million a year.

The common position is to be forwarded to Parliament under the co-operation procedure.