

**COUNCIL OF THE EUROPEAN UNION
GENERAL SECRETARIAT**

10550/93 (Presse 209)

1710th Council meeting
- JUSTICE AND HOME AFFAIRS -

Brussels, 29 and 30 November 1993

Presidents: **Mr Melchior WATHELET**
Deputy Prime Minister and
Minister for Justice of the Kingdom of
Belgium

Mr Louis TOBBACK
Minister for the Interior and Policy on
Non-Nationals of the Kingdom of
Belgium

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

Belgium

Mr Melchior WATHELET Deputy Prime Minister and Minister
for Justice
Mr Louis TOBACK Minister for the Interior and Policy on
Non-Nationals

Denmark

Mrs Birte WEISS Minister for the Interior
Mr Erling OLSEN Minister for Justice

Germany

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

Greece

Mr Stelios PAPATHEMELIS Minister for Public Order

Spain

Mr Antonio ASUNCION HERNANDEZ Minister for the Interior
Mr Alberto BELLOCH JULIVE Minister for Justice

France

Mr Charles PASQUA Minister for the Interior
Mr Pierre MEHAIGNERIE Minister for Justice

Ireland

Mrs Maire GEOGHEGAN-QUINN Minister for Justice

Italy

Mr Nicola MANCINO Minister for the Interior
Mrs Daniela MAZZUCCONI State Secretary, Ministry of Justice

Luxembourg

Mr Marc FISCHBACH Minister for Justice

Netherlands

Mr Ernst M.H. HIRSCH BALLIN Minister for Justice
Mrs Ien DALES Minister for the Interior

Portugal

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

United Kingdom

Lord FRASER OF CARMYLLIE Minister of State, Scottish Office
Mr Charles WARDLE Parliamentary Under-Secretary of
State, Home Office

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Commission

Mr Pádraig FLYNN Member
Mr Raniero VANNI D'ARCHIRAFI Member

GENERAL REMARKS

At the start of the proceedings the Presidency particularly emphasized that this was the first meeting of the Justice and Home Affairs Council since the entry into force of the Treaty on European Union, Chapter VI of which encompassed the activities hitherto developed in various "Trevi" frameworks, namely mutual customs measures, immigration, judicial co-operation and CELAD, in the henceforth single institutional framework of the Council of the European Union. A substantial part of the Council's proceedings was, moreover, devoted to setting up the new organizational structures devolving from Chapter VI of the TEU and on programming future discussions on justice and home affairs.

In the above context, the Netherlands delegation stated that it was obliged to enter a parliamentary scrutiny reservation on all the items under discussion.

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PREPARATION FOR THE EUROPEAN COUNCIL

In accordance with the express request made by the European Council on 29 October, the Council drew up an action plan and a work programme for all the sectors for which it is responsible, namely asylum and immigration, police and customs co-operation and the fight against drugs, and co-operation in criminal and civil matters.

It was noted that a general reservation by the Spanish delegation (linked, on the one hand, to a bilateral problem in the field of asylum between Spain and Belgium and, on the other hand, to certain issues outstanding with regard to implementation of the decision on "seats" taken by the European Council on 29 October) prevented the formal adoption, at this stage, of the action plan and work programme relating to the fields of asylum and immigration, as well as some areas of police and customs co-operation and the fight against drugs.

However, as the contents of the work programme and of the action plan for these two sectors did not give rise to any substantive problems, the Presidency decided to forward them to the European Council on its own responsibility.

The Council adopted the part of the action plan and of the work programme concerning judicial co-operation, and it is also to be submitted to the European Council meeting on 10 and 11 December 1993.

The main ingredients of the action plans and work programmes are as follows:

- As regards asylum and immigration policy, they relate in particular to the proposal for a Regulation on the list of third countries whose nationals require visas, a proposal for joint action involving harmonized application of the definition of "refugee" and provisions concerning the procedure for vetting asylum-seekers and the problem of the readmission of illegal immigrants.
- As to co-operation in police and customs matters and the fight against drugs, the priorities are in particular the setting up of the Europol Drugs Unit, preparation of the Europol Convention, the fight against organized crime, drug trafficking, money laundering and certain customs measures.
- With regard to judicial co-operation, particular emphasis was placed on extradition and the means of co-operating against organized crime, mutual assistance in criminal matters, the enforcement of foreign measures, etc.

IMMIGRATION AND ASYLUM

While taking into account the general reservation by Spain, the Council took stock of the work on immigration and asylum in the light of the work programme adopted in Maastricht, noting that work on the implementation of the programme was well ahead, notably as regards the preparation of a number of texts on the practical application of the Dublin Convention.

The Council also agreed with the Commission's conclusion, in the report to the Council on the matter, that it would be premature to transfer competence on right of asylum to the Community Institutions, but that the matter should be re-examined before the end of 1995. Lastly, a number of texts were formally adopted, in particular a review on the admission and reception of displaced persons from the former Yugoslavia.

RACISM AND XENOPHOBIA

Following the decision taken by the Ministers for Justice and Home Affairs to conduct an inquiry into racism and xenophobia, the Council, on the basis of the information provided, approved a number of specific measures concerning the fight against this scourge.

The Council's conclusions are set out in Annex I.

IMPLEMENTATION OF ARTICLE 100c – VISA AND CROSSING OF EXTERNAL FRONTIERS

The Council heard statements by Commissioners Flynn and Vanni d'Archirafi presenting the Commission proposals on the list of countries whose nationals require visas, which was put forward pursuant to Article 100c, and concerning the revision of the draft Convention on the Crossing of the External Frontiers of the European Union.

In conclusion, the Council agreed that once it received the texts of those proposals it would initiate the procedures laid down in the Treaty for examining them.

READMISSION AGREEMENTS WITH THIRD COUNTRIES

Continuing the proceedings begun some time ago by the Ministers responsible for immigration policy, the Council agreed on guidelines to be followed in preparing bilateral or multilateral readmission agreements with third countries. These guidelines, to be followed by the Member States of the Union, concern in particular demarcation of the scope of readmission agreements, the authorities competent to implement them, the definition of nationality for the purposes of readmission, time scales and other aspects to be taken into consideration.

The Council also discussed the desirability of a link between Europe agreements, other association or co-operation agreements and third countries' practices as regards the readmission of illegal immigrants.

The Council approved the principle of such a link, provided that this was evaluated on a case-by-case basis, and instructed the Permanent Representatives Committee to continue examining the implementation of this principle and to report to it at a forthcoming Council meeting.

CO-OPERATION WITH THIRD COUNTRIES

The Council discussed ways of enlarging and intensifying relations with certain third countries under Title VI of the TEU, concerning justice and home affairs. With that in mind, the Council instructed the Permanent Representatives Committee to continue, with the support of the K.4 Committee, its deliberations on the issue with a view to putting specific suggestions to it at its next meeting.

It should also be noted that on Tuesday 1 December the Troika will be meeting the relevant Ministers from the countries which have applied for accession, and officials from the United States, Canada, Switzerland and Morocco, to inform them of the Council's discussions and to exchange views on subjects of common interest.

PROGRESS REPORT ON EXTRADITION

The Council took note of an interim report on current work in the field of extradition. The Ministers for Justice had requested, at their informal meeting in Limelette in September 1993, in a statement formally adopted by the Council at that meeting (see Annex II), an examination of extradition requirements relaxing them, and of extradition procedures, with a view to simplifying and accelerating them, as far as was compatible with the fundamental principles of the Member States' national laws.

The Council asked the Working Party to continue its proceedings along the same lines with a view to submitting a final report by the end of 1994, as envisaged in the Limelette statement.

ACCESSION BY THE COMMUNITY TO THE EUROPEAN CONVENTION ON HUMAN RIGHTS (ECHR)

The Council had before it a Presidency report on progress with regard to the accession of the Community to the ECHR, placing emphasis on certain political or legal political aspects.

At the end of the discussion the Council agreed to ask the Court of Justice for its opinion on the consequences of Community accession with regard to the EC Treaty.

The Council instructed the Permanent Representatives Committee initially to clarify the aspects to be put to the Court and subsequently to continue its discussions in the light, in particular, of the Court's opinion, once it had been delivered.

EUROPOL

The Council was informed of progress as regards the drafting of the Europol Convention, on the one hand, and the setting up of its precursor, the Europol Drugs Unit (EDU), on the other.

As regards the latter subject, the Presidency noted that there was basically no longer any problem regarding the conditions for transition between the Project Team, the start-up stage and the transitional stage. However, in view of Spain's reservation on all points concerning Europol, the Council was unable, at this stage, to adopt the Recommendations concerned, although adoption will be possible once the Spanish reservation has been withdrawn.

As to the Europol Convention, the Council noted that considerable progress had already been made over the last few months, and it instructed its relevant subordinate bodies to continue discussions so that the objective set by the European Council on 29 October of the Convention being concluded by October 1994 can be met.

INTERNATIONAL ORGANIZED CRIME

The Council took note of a report from the ad hoc Working Group on Organized Crime set up in September 1992, which had received a specific brief from the Ministers at their meeting in Kolding in May 1993.

The Council approved the programme of action against international organized crime contained in the report, providing in particular for measures on:

- exchanging information and setting up a common mechanism for the collection and systematic analysis of information on international organized crime;

- improving and intensifying co-operation between Member States in particular on the fight against money laundering, telecommunications and measures to encourage witnesses to testify while ensuring their security, etc.

FIGHT AGAINST TERRORISM

The Council held a wide-ranging discussion on the internal and external terrorist threats facing the Member States of the European Union.

At the end of the discussion the Council called upon the Working Party on Terrorism set up under the new structures responsible for implementing the provisions of the TEU on justice and home affairs to seek ways of improving co-operation between Member States on the matter.

CRIME ANALYSIS

The Council agreed on a Recommendation directed towards the organization of a training module on the operational analysis of crime on the basis of an established programme.

FRAUD ON AN INTERNATIONAL SCALE – PROTECTION OF THE EUROPEAN UNION'S FINANCIAL INTERESTS

The Council adopted a Resolution on the protection of the European Union's financial interests from fraud on an international scale, the text of which is set out in Annex III.

TRADE IN HUMAN BEINGS FOR THE PURPOSES OF PROSTITUTION

The Council agreed on five Recommendations to the Member States directed notably towards intensifying the fight against the procuring of prostitutes and towards dismantling networks for the exploitation of prostitution. The five Recommendations are set out in Annex IV.

RESPONSIBILITY OF ORGANIZERS OF SPORTING EVENTS

The Council adopted a Recommendation in this important area of public safety. The text of the Recommendation is set out in Annex V.

ENVIRONMENTAL CRIME

The Council adopted a Recommendation relating in particular to exchanges of information in this field. The text of the Recommendation is set out in Annex VI.

RACISM AND XENOPHOBIA - COUNCIL CONCLUSIONS

- "1. The Council took note of the results of the survey into racist and xenophobic acts initiated by the Ministers of Justice and Home Affairs in May 1993.
2. It reiterated its abhorrence at and concern about attacks on immigrants which have taken place in many Community States and condemned the rise in right-wing extremism which had occurred throughout Europe.
3. The Council recalled its resolution adopted on 29 May 1990 ⁽¹⁾ on the fight against racism and xenophobia which set out a number of measures to counteract these phenomena.
4. The Council acknowledged the important work undertaken by the European Parliament in this area as well as the recent initiatives taken by the Council of Europe summit on 8 and 9 October 1993 and in particular its action plan on the fight against racism, xenophobia, anti-semitism and intolerance. It also welcomed the conclusions reached by the 5th Conference of European Ministers responsible for migration questions held in Athens on 18 and 19 November 1993 under the auspices of the Council of Europe, which indicated inter alia possible measures which governments could take against racism and xenophobia.
5. Based on the results of the survey and as a first step to promoting improved co-operation between Member States to prevent racist and xenophobic acts, the Council endorsed the measures set out below and instructed the Permanent Representatives Committee to report to it by the end of 1994 at the latest on the progress achieved and on any other concrete measures considered appropriate to combat racism and xenophobia:
 - Member States not already applying the multi-agency approach (involving schools, social services, police, etc.) which could provide a useful tool to combat the problem of racism and xenophobia, should give consideration to the possibilities afforded by it. Where appropriate, key elements to this approach could be agreed and adopted by the Member States in due course.

(1) OJ C 157/1, 27.6.1990, p. 1.

- Emphasis should be given to appropriate training by the various enforcement agencies at national level, so that they are increasingly aware of racism and xenophobia and are sensitive to those who suffer from these phenomena. The Member States could discuss the essential elements of a training programme aimed at raising awareness levels in particular within the police, thus increasing co-operation possibilities and encouraging exchanges in experiences in this field to take place.
- To the extent that it is possible, Member States should examine ways of broadly improving the collection and publication of statistics relating to racist and xenophobic acts.

Improved data collection should cover both quantitative and qualitative aspects, be based on a broad acceptance of what constitutes a racist or xenophobic act and aim at establishing a "typology" of these acts.

Such an improvement would allow for better monitoring of the situation throughout the Community and permit valid comparisons to be made concerning the efficacy of the steps taken by the different Member States to combat the phenomenon.

- Particular emphasis should be given to cross-border co-operation in relation to combating racism and xenophobia. This should involve, inter alia, continuing and improving exchanges of information between the Member States at the operational level (quantity, nature, structure, modus operandi and profile of perpetrators, profile of victims, target groups), in particular in relation to racist acts of violence or manifestations by right-wing extremists to ensure that they are satisfactorily monitored and investigated."

EXTRADITION - COUNCIL STATEMENT

"The Council of the European Union:

- A. Recognizing that serious crime often assumes trans-border forms,
- B. Concerned to strengthen judicial co-operation between the Member States in the fight against crime,
- C. Recognizing the importance of extradition in the area of judicial co-operation,
- D. Noting the results achieved within the framework of the Judicial Co-operation Working Party in enhancing the effectiveness of forms of judicial co-operation between the Twelve other than on extradition,
- E. Convinced that further progress could be made concerning extradition,
- F. Having in mind the inter-relationship between the work of the Judicial Co-operation Working Party on this point and work relating to the setting up of a European information system,
- G. Emphasizing that all Member States have a common interest in ensuring that extradition processes and procedures work effectively and expeditiously,
- H. Expressing confidence in the structure and operation of each other's judicial systems, and in the correlative ability of all Member States to ensure a fair trial for their own and other States' nationals,
- I. Taking into account the rights of the individual under the European Convention for the Protection of Human Rights and Fundamental Freedoms,
- J. Having in mind the importance of examining the expediency of concluding between the Member States of the European Communities a convention supplementing the Council of Europe Convention of 13 December 1957, and amending some of its provisions with a view to facilitating extradition,
 1. Hereby decides to give the following working programme on extradition to the relevant Working Party and invites the Working Party to report to it on the points listed below within one year;

Regarding extradition requirements

2. In order to increase the efficiency of judicial co-operation within the Community, the requirements and grounds for refusing extradition, including reservations expressed by the Member States when ratifying the European Convention on Extradition, should be re-examined with a view to relaxing them to the fullest extent compatible with the basic principles of Member States' laws;
3. In preparation for future decisions, the following measures should in particular be examined by the Working Party for the purpose of assessing the expediency of incorporating them in a convention on extradition between the Twelve;

extraditable offences:

- (a) reducing to one year the imprisonment threshold required for extradition in all Member States;
- (b) setting aside the imprisonment threshold requirement for the requested State, provided that the conduct concerned carries a custodial penalty in that State and is an extraditable offence according to the law of the requesting State;

political offences:

- (c) exclusion of the political nature of the offence as a ground for refusal of extradition in connection with requests submitted between Member States for one of the offences defined in Article 1 or covered by Article 2 of the European Convention on the Suppression of Terrorism of 27 January 1977;

fiscal offences:

- (d) assimilation of fiscal offences to ordinary law offences for the purposes of extradition, at least concerning excise duties, value added tax and customs;

lapse of time:

- (e) assessment of whether there is immunity from prosecution or punishment by reason of lapse of time by exclusive reference to the law of the requesting State;

extradition of nationals:

- (f) extradition of nationals, possibly with conditions;

life sentence:

- (g) extradition for offences punishable by life imprisonment under the requesting State's law, if that sentence is not provided for in the requested State's legislation, provided that the requesting State gives an assurance that measures will be provided in respect of the sentence which would be for the benefit of the requested person pursuant to its legislation and practice;

speciality rule:

- (h) waiving the speciality rule in specific cases;

Regarding extradition procedures

- 4. In order to increase the efficiency of judicial co-operation within the Community, extradition procedures should be re-examined, on the basis of the discussions relating to the requirements and grounds refusing extradition, with a view to simplifying and accelerating those procedures in a way compatible with the basic principles of the Member States' domestic laws;
- 5. In preparation for future decisions, the following measures should in particular be examined by the Working Party for the purpose of assessing the expediency of incorporating them in a convention on extradition in the framework of the European Union;
 - (a) simplification of judicial control of the extradition decision, at least in some circumstances;
 - (b) simplification of the procedure where the person agrees to extradition."

FRAUD ON AN INTERNATIONAL SCALE - COUNCIL RESOLUTION

THE COUNCIL OF THE EUROPEAN UNION,

HAVING regard to the Treaty on European Union,

RECALLING the Council Resolution of 13 November 1991 concerning the protection of the financial interests of the Communities in which the Council and the Representatives of the Governments of the Member States, meeting within the Council, called upon the Commission to conduct a comparative law study of the Member States' laws, regulations and administrative provisions relating to fraud against the Community budget;

BEARING IN MIND, furthermore, recent developments regarding the relationship between criminal law and Community law, particularly the Court of Justice judgment of 27 October 1992 in case C-240/90 ⁽²⁾;

CONSIDERING THAT, without prejudice to Community competence, the question of protection of the financial interests of the Communities must henceforth be examined in the light of the co-operation introduced under Title VI of the Treaty on European Union;

1. Notes with interest the comparative study of the laws, regulations and administrative provisions of the Member States relating to fraud against the Community budget which was conducted by the Commission on the basis of the Resolution of the Council and the Representatives of the Governments of the Member States meeting within the Council;
2. Considers that that study suggests very useful avenues to be explored with a view to protecting the financial interests of the Communities and highlights fundamental questions of principle which require detailed examination;
3. Considers that some of those questions fall within areas of common interest covered by Title VI of the Treaty on European Union and therefore require detailed examination by the bodies set up within the framework of Title VI;
4. Considers that the study of the relationship between criminal law and Community law should be continued in the light of the aforesaid judgment of the Court of Justice and the study conducted by the Commission;

(2) Germany v. Commission of the European Communities – ECR 1992-8, Part 1, p. 5383.

5. Considers it necessary to examine the implementation of Article 209a of the Treaty in the Member States;
6. Considers it necessary to examine, in the light of the study conducted by the Commission and the earlier work of the ad hoc Group on Community Law and Criminal Law, the measures which should be taken to achieve a greater degree of compatibility in the laws, regulations and administrative provisions of the Member States in the effort to combat inadmissible practices by which harm is done to the financial interests of the Communities, with particular attention to the following points:
 - (1) offences;
 - (2) liability;
 - (3) penalties;
 - (4) settlements and the like;
 - (5) extra-territorial application and mutual assistance in criminal matters;
 - (6) limitation,
7. Has decided to examine, in the second half of 1994, a report to be submitted to it in accordance with points 4, 5 and 6 of this Resolution and any proposals it may contain;
8. This Resolution does not prejudice the division of competence between the Community and the Member States in relation to these matters.

TRADE IN HUMAN BEINGS FOR THE PURPOSES OF PROSTITUTION
– COUNCIL RECOMMENDATIONS

Recommendation 1

Whereas effectively combating procuring and dismantling prostitution exploitation networks require that police officers have the best information possible on other countries' laws and foreign police methods of combat and practices, the Council recommends taking bilateral initiatives so that police officers may complete their training in this area.

Recommendation 2

Whereas effectively combating the exploitation of prostitution may require the centralization of information at national level, the Council recommends that national authorities examine the possibility of setting up national co-ordination structures within States and developing international exchanges of that information.

Recommendation 3

The Council stresses the need to develop the role of the collection and distribution of information in this field by liaison officers with general powers seconded to Community Member States and to non-member countries from which the victims of prostitution networks originate.

Recommendation 4

As most Member States have no special legislation to deal with trade in human beings for the purposes of prostitution, the Council would stress the importance of considering the need for instituting information campaigns in diplomatic and consular circles and among the border control authorities in order to forestall the exploitation of prostitution, particularly when visa applications are examined.

Recommendation 5

The Council decides that work carried out in the fight against trade in human beings for the purposes of prostitution will be extended and intensified in the areas of administrative and police co-operation, law enforcement, immigration and entry to national territories.

RESPONSIBILITY OF ORGANISERS OF SPORTING EVENTS
- COUNCIL RECOMMENDATION

"The Council notes that the Standing Committee of the Council of Europe has established a check list to ensure that all security measures are taken during football matches.

The Council expresses its satisfaction at the efforts already made by UEFA towards collaborating with the competent authorities in a spirit of mutual understanding and responsibility with the aim of increasing security at football matches.

The Council acknowledges that in each of the twelve Member States, the Minister responsible for public safety will recommend, in accordance with the national situation, that this check list is used at every international match (at both friendly and competitive matches, whether within the framework of UEFA or FIFA); to this end, it will forward the necessary documents and give national football federations the requisite guidelines."

ENVIRONMENTAL CRIME
- COUNCIL RECOMMENDATION

- "1. The Council is aware that environmental crime constitutes a growing threat for certain Member States and that the training of competent officials to detect it plays an essential part in the elimination of this type of crime and other forms of organized crime.
2. The Council recommends that discussions on co-operation between competent officials in this area should concentrate on problems associated with cross-border transfers of waste.
3. In this context an exchange of information should be organized on the basis of an ad hoc report dealing with illegal dumping, the illegal brokerage of waste and the existence of specific flows of waste.
4. The Council recommends that Member States should, as far as possible, ensure that statistics based on this information are drawn up, circulated and analysed and that they keep each other informed.
5. The Council takes the view that consideration should be given to centralizing such information at a European level.
6. With regard to the training of competent officials in this area, the Council approves the organization of a seminar on the illegal export and transport of substances that are harmful to the environment in breach of the regulations in force."