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THE EUROPEAN UNION**

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**DRAFT MINUTES**

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Subject : **Special meeting of the Council (Justice, Home Affairs and Civil Protection)**  
held in Luxembourg on 16 October 2001

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## 1. Adoption of the agenda

After adopting the agenda and meeting in parallel with the Council, Ministers signed the Protocol to the Convention on mutual assistance in criminal matters established by the Council in May 2000.

## 2. Proposal for a Council Framework Decision on the European arrest warrant and the surrender procedures between the Member States

12102/01 COPEN 51

+ REV 1 (fr, en)

12646/01 COPEN 61 CATS 30

The Presidency noted that there was considerable convergence in Member States' positions on double criminality:

- (a) all Member States seemed to agree in any case that the principle of double criminality should be abandoned for all harmonised offences;
- (b) a clear majority of Member States considered that other offences should also be exempt from the principle of double criminality;
- (c) the following question therefore remained: in which (limited) cases should the principle of double criminality be retained? The Presidency considered that in that case discussions should focus on two elements:
  - (i) the principle whereby the State of enforcement did not have to cooperate if the offence was mainly committed on its own territory and was not criminalised there;
  - (ii) the possibility of certain exceptions to the principle of territoriality; in other words, a limited common list of exceptions would have to be drawn up. It might be possible to achieve the same result with a positive list as proposed by the French delegation, but that would take longer;

- (d) all Member States considered it important to have a single system. Even in exceptional cases where the principle of double criminality was retained, it would still be a matter of arrest and surrender. The former extradition system would be abolished between Member States.
- (e) in the light of the above, the Presidency asked CATS and Coreper to continue discussing the issue. The examination of this dossier would then be pursued at the next JHA Council in the hope that it might be closed there.

The Presidency concluded that the only point separating delegations on the above summary was whether to address the problems through a negative list or a positive list.

The Council instructed Coreper to consider the respective merits of both methods, beginning with a common negative list, and report back for its next JHA meeting on 16 November 2001.

3. **Proposal for a Council Framework Decision on combating terrorism**

12103/01 DROIPEN 81

12647/01 DROIPEN 85 CATS 31

Although the question of defining offences was not on the agenda, several speakers pointed out that CATS discussions were going in the right direction but that certain aspects should be considered in greater depth (for example, Article 1(f) mentioned by Sweden).

Delegations' positions on penalties remained fairly far apart.

The Presidency accordingly suggested a compromise formula:

- in part inspired by the Danish formula which consisted of referring to maximum sentences under national law for terrorist offences
- in part a harmonisation of penalties for offences committed by and as part of a terrorist group.

It seemed that the majority of delegations could support the compromise.

The President was aware that:

- the level of sentences suggested for acts committed as part of a terrorist organisation posed problems for certain delegations. The Article 36 Committee was instructed to pursue the discussion on this issue.
- Germany and Austria remained opposed to setting a minimum for the maximum sentence. The President confirmed that the Article 36 Committee was working actively on the matter and that COREPER would prepare a report for the Council meeting on 16 November 2001.

On European jurisdiction, the President suggested giving CATS a mandate to consider whether it would be a good idea to define criteria for assigning jurisdiction in a horizontal manner.

#### 4. **Other business**

No other business was raised.