2396th Council meeting

- JUSTICE, HOME AFFAIRS AND CIVIL PROTECTION -

Brussels, 6 and 7 December 2001

Presidents:

Mr Marc VERWILGHEN
Minister for Justice

Mr Antoine DUQUESNE
Minister for the Interior

of the Kingdom of Belgium
CONTENTS

PARTICIPANTS................................................................................................................................. 4

ITEMS DEBATED

EUROPEAN ARREST WARRANT AND SURRENDER PROCEDURES BETWEEN
MEMBER STATES............................................................................................................................. 6
COMBATING TERRORISM – FRAMEWORK DECISION..................................................................... 7
EUROJUST ........................................................................................................................................... 8
COMBATING THE SEXUAL EXPLOITATION OF CHILDREN AND CHILD
PORNOGRAPHY ................................................................................................................................. 9
APPROXIMATION OF SANCTIONS ................................................................................................. 10
EUROPOL .......................................................................................................................................... 11
SIGNING OF THE AGREEMENT BETWEEN EUROPOL AND THE UNITED STATES............ 11
COMBATING TERRORISM .............................................................................................................. 12
GRANT AND WITHDRAWAL OF REFUGEE STATUS................................................................. 13
BORDER CONTROL MANAGEMENT ............................................................................................. 13
EURODAC IMPLEMENTING RULES ............................................................................................... 14
VISA REQUIREMENT FOR ROMANIAN NATIONALS................................................................. 15
OTHER BUSINESS ......................................................................................................................... 16
− FOLLOW-UP TO THE SARAJEVO DECLARATION ................................................................. 16

MIXED COMMITTEE

VISA REQUIREMENT FOR ROMANIAN NATIONALS................................................................. 17
SIS II .................................................................................................................................................. 17
− NEW FUNCTIONALITIES ............................................................................................................. 17
PRESIDENCY REPORT ON CONSULAR COOPERATION ............................................................. 18
PROGRESS ON VISAS ..................................................................................................................... 18

ITEMS APPROVED WITHOUT DEBATE

JUSTICE AND HOME AFFAIRS ...................................................................................................... I
− Joint scale for assessing threats to public figures visiting the European Union – EU Recommendation .......... I
− Police cooperation to prevent and control violence and disturbances in connection with football matches
  with an international dimension – Resolution.................................................................................. I
− European Police College (CEPOL)............................................................................................... I
For further information call 02 285 84 15.
PARTICIPANTS

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

**Belgium**:
Mr Marc VERWILGHEN  
Mr Antoine DUQUESNE

**Denmark**:
Mr Bertel HAARDER  
Mr Niels PREISLER  
Mr Michael LUNN

**Germany**:
Mr Otto SCHILY  
Mr Hansjörg GEIGER

**Greece**:
Mr Philippos PETSALNIKOS  
Mr Michalis CHRISOCHOIDIS

**Spain**:
Mr Mariano RAJOY BREY  
Mr Ángel ACEBES PANIAGUA

**France**:
Ms Marylise LEBRANCHU  
Mr Daniel VAILLANT

**Ireland**:
Mr John O’DONOGHUE

**Italy**:
Mr Roberto CASTELLI  
Mr Claudio SCAJOLA

**Luxembourg**:
Mr Luc FRIEDEN

**Netherlands**:
Mr Benk KORTHALS  
Mr Klaas Georg de VRIES  
Ms Ella KALSBEEK

**Austria**:
Mr Dieter BÖHMDORFER  
Mr Ernst STRASSER

**Portugal**:
Mr António COSTA  
Mr Nuno SEVERIANO TEIXEIRA

**Finland**:
Mr Ville ITÄLÄ  
Mr Johannes KOSKINEN

Minister for Justice
Minister for the Interior
Minister for Refugees, Immigration and Integration
State Secretary at the Ministry of Refugees, Immigration and Integration
State Secretary at the Ministry of Justice
Federal Minister for the Interior
State Secretary, Federal Ministry of Justice
Minister for Public Order
First Deputy Prime Minister and Minister for the Interior
Minister for Justice
Keeper of the Seals, Minister for Justice
Minister for the Interior
Minister for Justice, Equality and Law Reform
Minister for Justice
Minister for the Interior
Minister for Justice
Minister for the Interior
Minister for Justice
Minister for the Interior
Sweden:
Mr Thomas BODSTRÖM
Ms Gun-Britt ANDERSSON

Minister for Justice
State Secretary at the Ministry of Foreign Affairs, with
responsibility for International Development Cooperation,
Migration and Immigration

United Kingdom:
Ms Angela EAGLE

Parliamentary Under-Secretary of State, Home Office

Commission:
Mr António VITORINO

Member

Also participating in the Mixed Committee:

Iceland:
Ms Solveig PETURSDOTTIR

Minister for Justice

Norway:
Ms Erna SOLBERG

Minister for Local Government and Regional Development
EUROPEAN ARREST WARRANT AND SURRENDER PROCEDURES BETWEEN MEMBER STATES

The Council examined a draft Framework Decision on the European arrest warrant and the surrender procedures between Member States, on the basis of a Presidency overall compromise proposal.

Following that examination, the Presidency was able to record the agreement of 14 delegations on its compromise. One delegation was unable to support the proposal.

The main features of the compromise are as follows:

- The arrest warrant is broad in scope. In particular, it gives rise to surrender in respect of 32 listed offences (see list in the Annex, p. 19), without verification of the double criminality of the act and provided that the offences are punishable in the issuing Member State by a custodial sentence of a maximum of at least 3 years.

- A territoriality clause making it optional to execute an arrest warrant in respect of offences committed in the executing State or acts which took place in a third State but which are not recognised as offences by the executing State.

- A retroactivity clause making it possible for a Member State to process requests submitted prior to the adoption of the Framework Decision under existing instruments relating to extradition.
COMBATING TERRORISM – FRAMEWORK DECISION

The Council reached political agreement, subject to parliamentary scrutiny reservations by three delegations, on the Framework Agreement on combating terrorism, further to the mandate of the extraordinary European Council of 21 September and the Gent European Council of 19 October 2001.

The Framework Decision defines terrorist aims and offences and establishes thresholds for minimum/maximum penalties for various types of offence.

When defining terrorist aims, the Council opted for a wording that strikes a balance between the need to punish terrorist offences effectively and the need to guarantee fundamental rights and freedoms, ensuring that the scope could not in any circumstances be extended to legitimate activities, for example trade union activities or anti-globalisation movements.

Regarding penalties for terrorist offences, the Council, in accordance with the common guidelines established at its meeting on 16 November, agreed on a provision requiring custodial sentences of a maximum length of at least 15 years to be imposed for directing a terrorist group and at least 8 years for the other offences relating to terrorist groups specified in the Framework Decision. Other terrorist offences would be punished by heavier sentences than those attracted by ordinary law offences under the Member States' national law.
EUROJUST

The Council reached political agreement, subject to parliamentary scrutiny reservations by four delegations, on the Decision setting up Eurojust. The agreement adhered to the timetable decided on by the Tampere European Council, which asked for the legislation setting up the unit to be adopted by the end of 2001.

The objective of Eurojust is to stimulate and improve the coordination, between the competent national authorities, of investigations and prosecutions in the Member States, taking into account any request emanating from a competent national authority and any information provided by any body competent by virtue of provisions adopted within the framework of the Treaties. It is also to facilitate the execution of international mutual legal assistance and the implementation of extradition requests and to support otherwise the competent authorities of the Member States in order to render their investigations and prosecutions more effective.

Eurojust will be composed of one national member seconded by each Member State in accordance with its legal system, being a prosecutor, judge or police officer of equivalent competence. Each national member may be assisted by one person, or, if necessary and with the agreement of the College, several persons.

The Decision setting up Eurojust will enter into force on the day of its publication in the Official Journal of the European Communities. On that date the Provisional Judicial Cooperation Unit (PRO-EUROJUST) will cease to exist.

Under transitional measures laid down in the Decision, the national members of the Provisional Judicial Cooperation Unit will, for a period not exceeding two months, take on the role of national member of Eurojust until the national member of the Member State concerned is definitively appointed.

The decision on the headquarters of the unit will be taken subsequently by the European Council.
COMBATING THE SEXUAL EXPLOITATION OF CHILDREN AND CHILD PORNOGRAPHY

The Council noted that there was very broad consensus on a Presidency compromise proposal regarding the key elements of a Framework Decision on combating the sexual exploitation of children and child pornography.

One question remains unresolved, owing to the fact that one delegation proposed amending the details of the exclusions from criminal liability of conduct relating to child pornography.

The aim of the draft Framework Decision is to define the conduct relating to the sexual exploitation of children and child pornography that should be punished under the national legislations. The provisions include a definition of child pornography and the offences concerning sexual exploitation of children. It also provides for effective, proportionate and dissuasive penalties, which may include criminal fines, to punish the sexual exploitation of children and child pornography.
APPROXIMATION OF SANCTIONS

The Council held a brief policy debate on the method to be used to approximate penal sanctions.

Following the debate, the Presidency was able to record that all delegations were in favour of continuing work on the approximation of penal sanctions on the basis of a grid containing four different levels of sanctions – each of which proposed a range of penalties – to be provided for under the national law of each Member State, as follows:

- level 1: penalties giving rise to extradition (general rule);
- level 2: penalties whose upper limit would at least range from 1 to 5 years (specific criteria);
- level 3: penalties whose upper level would at least range from 5 to 10 years (specific criteria);
- level 4: penalties whose upper limit would exceed 10 years (cases in which maximum penalties apply).

Under this system, for a specific offence referred to in a framework decision the Council should only have to agree on the choice of level. The range of penalties at this level would leave each Member State the flexibility to punish offences by custodial sentences in coherence with their national penal codes.

It will be remembered that at the JHA Council meeting on 27 and 28 September 2001, at the express request of three delegations the Council undertook to press ahead with work on the methodology for the approximation of sanctions.
EUROPOL

The Council authorised the Director of Europol to conclude a cooperation agreement with the United States on the exchange of strategic information, excluding the transmission of personal data.

The purpose of the Agreement is to enhance cooperation between Europol and the United States in the fight against serious crime, in particular terrorism, by means of information exchange. There will be cooperation in the prevention, detection, suppression and investigation of serious forms of crime.

Regarding the exchange of personal data, the Council, having noted the data protection report concerning the United States drawn up by Europol, authorised Europol to enter into negotiations with the United States with a view to concluding an agreement in the field.

These decisions accord with the conclusions of the JHA Council of 20 September 2001 and are aimed at enhancing relations between Europol and the United States.

***************

SIGNING OF THE AGREEMENT BETWEEN EUROPOL AND THE UNITED STATES

In parallel with the Council meeting, the Director of Europol, Jürgen STORBECK, and the United States Ambassador, Rockwell SCHNABEL, signed the abovementioned Cooperation Agreement between Europol and the United States of America, in the presence of the Ministers for Justice and Home Affairs of the Member States of the European Union and United States Secretary of State Colin Powell.
COMBATING TERRORISM

The Council took note of a detailed presentation by Europol Director Jürgen STORBECK on ongoing work and progress made in analysing the terrorist threat following the 11 September events and the mandate given to Europol by the European Council on 20 September 2001.

The Europol Director highlighted the massive amount of raw or processed data supplied by Member States on the activities of the Al Qaida network in European Union territory. Those data were to be analysed by a new special Europol unit. In general, he spoke of a highly positive change in Member States' willingness to provide information to Europol, but said there were still some problems, particularly of a legal nature.

Under this item the Council also took note of an initiative by the German delegation proposing additional measures to combat terrorism, and instructed the Article 36 Committee and the Strategic Committee to examine the German delegation's proposal.

Lastly, the Council took note of the completion of the biennial update of the list of terrorist organisations, referred to as "third-pillar lists", intended for essentially operational use.
GRANT AND WITHDRAWAL OF REFUGEE STATUS

The Council held a debate on minimum standards on procedures in Member States for granting and withdrawing refugee status with, as background, a Commission proposal for a Directive on this subject.

At the close of the debate the Presidency noted the Council's overall agreement on the architecture of the asylum procedure to apply Europe-wide and identified a number of guidelines for the future Directive on minimum standards for granting and withdrawing refugee status.

BORDER CONTROL MANAGEMENT

After hearing a presentation of the Presidency report on a European management concept on control of the European Union's external borders, the Council held a "tour de table" with a view to identifying a common approach to further work on this matter.

At the close of the Council's debate the Presidency noted delegations' backing for the report's general approach pursuing the following aims:

- to strengthen and standardise European border controls;
- to assist candidate States in organising controls at Europe's future external borders, by instituting operational cooperation;
- to facilitate crisis management with regard to border control.
- to prevent illegal immigration and other forms of cross-border crime.
EURODAC IMPLEMENTING RULES

The Council took note of a briefing by the French delegation on technical visits being made to Member States in order to enable France to transmit "rolled" fingerprint impressions to the Eurodac Central Unit. The delegation would give its assessment of the outcome of those visits as soon as possible with a view to early adoption of the draft Regulation on Eurodac implementing rules.

It should be noted that on 11 December 2000 the Council adopted a Regulation concerning the establishment of Eurodac for the comparison of asylum applicants' fingerprints for the effective application of the Dublin Convention, in order to permit identification of applicants who have lodged asylum applications in more than one Member State. Article 22(1) of that Regulation provides for the Council, acting unanimously, to adopt implementing provisions.
Endorsing the Mixed Committee's work on the lifting, with effect from 1 January 2002, of the visa requirement for Romanian nationals to cross EU borders, in line with the provisions relating to Romania in the Regulation listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement, the Council adopted the statement set out below.

The lifting of the visa requirement for Romanian nationals will be effective from the twentieth day following publication of the relevant Decision in the Official Journal.

"Council statement on further cooperation with Romania following the decision to grant exemption from the visa requirement:

Further to the report dated 29 June 2001 from the Commission to the Council on the exemption of Romanian citizens from the visa requirement (COM(2001) 361 final), the Council has decided to waive the visa requirement for Romanian nationals as from 1 January 2002.

The Council welcomes the measures already implemented and being planned and notes with satisfaction the precise and concrete commitments entered into by Romania to guarantee security and prevent illegal immigration in the Member States of the European Union. It is the wish of the Council that the implementation of these measures should lead to an effective improvement.

In the context of the analyses carried out with participation of the Member States by the Working Party on Collective Evaluation and by existing structures at the Commission on the progress achieved by each of the candidate countries and the loopholes which they still need to plug in order to align themselves on the European Union "acquis" in the field of justice and home affairs, the Council will grant special attention to the consequences for internal security and illegal migration in the Member States and the following aspects:

- border controls on entry, transit and exit;
- visa policy;
- travel documents and identity documents;
- legislation on immigration and asylum;
- laws and other rules on citizenship and stateless persons;
- readmission of third-country nationals residing illegally in Member States;
- economic and social dimension.

On the basis of the periodical assessments made within the Council and where necessary, the Council will decide on all appropriate measures in accordance with the Treaty."
OTHER BUSINESS

– FOLLOW-UP TO THE SARAJEVO DECLARATION

The Council took note of a Presidency report on a senior officials' meeting held in Belgrade on 30 November 2001 in connection with the implementation of the Sarajevo Declaration concerning, inter alia, the deepening of regional cooperation in the field of asylum and immigration and alignment on European rules in those areas.
MIXED COMMITTEE

The EU/Iceland and Norway Mixed Committee met at Ministerial level during the morning of 7 December 2001, with Ms Solveig PETURSDOTTIR, Minister for Justice of Iceland, in the chair. It discussed the following matters:

VISA REQUIREMENT FOR ROMANIAN NATIONALS

The Mixed Committee endorsed the text removing the visa requirement for Romanian nationals.

SIS II

– NEW FUNCTIONALITIES

The Mixed Committee gave its approval for a study to put in place technology with adequate capacity to integrate all the Member States of an enlarged Europe into SIS II.

The study would cover, inter alia, SIS II access for Europol, Eurojust and Member States’ vehicle registration authorities and, possibly, security services.

The Mixed Committee also held an initial exchange of views on further possibilities for using SIS II, notably systematic registration of visas issued by Member States or registration of troublemakers.
PRESIDENCY REPORT ON CONSULAR COOPERATION

The Mixed Committee took note of a report by the Council Presidency on local consular cooperation. In their statements, Ministers emphasised that they backed the ideas and proposals in the report and expressed support for further work on this matter under the Spanish Presidency in accordance with the guidelines outlined in the report.

The report highlights,inter alia, shortcomings encountered in certain courts with regard to consular cooperation and identifies possible solutions.

PROGRESS ON VISAS

The Mixed Committee noted that, without prejudice to consideration of the European Parliament's Opinion, there was broad consensus on a Regulation concerning a uniform format for visas and a uniform format for visa application forms.

It further signified its agreement to a Decision on administrative costs for visa applications, shortly to be placed before the Council for adoption.
ANNEX

EUROPEAN ARREST WARRANT

List of offences giving rise to surrender without verification of the double criminality of the act, provided they are punishable in the issuing Member State by a custodial sentence of a maximum of at least 3 years:

- participation in a criminal organisation,
- terrorism,
- trafficking in human beings,
- sexual exploitation of children and child pornography,
- illicit trafficking in narcotic drugs and psychotropic substances,
- illicit trafficking in weapons, munitions and explosives,
- corruption,
- fraud, including that affecting the financial interests of the European Communities within the meaning of the Convention of 26 July 1995 on the protection of the European Communities' financial interests,
- laundering of the proceeds of crime,
- counterfeiting of the euro,
- computer-related crime,
- environmental crime, including illicit trafficking in endangered animal species and in endangered plant species and varieties,
- facilitation of unauthorised entry and residence,
- murder, grievous bodily injury,
- illicit trade in human organs and tissue,
- kidnapping, illegal restraint and hostage-taking,
- racism and xenophobia,
- organised or armed robbery,
- illicit trafficking in cultural goods, including antiques and works of art,
- swindling,
- racketeering and extortion,
- counterfeiting and product piracy,
- forgery of administrative documents and trafficking therein,
- forgery of means of payment,
- illicit trafficking in hormonal substances and other growth promoters,
- illicit trafficking in nuclear or radioactive materials,
- motor vehicle crime,
- rape,
- arson,
- crimes within the jurisdiction of the International Criminal Tribunal,
- unlawful seizure of aircraft/ships,
- sabotage.

---------------------------
ITEMS APPROVED WITHOUT DEBATE

The documents whose references are given are available on the Council's Internet site http://ue.eu.int. Acts adopted with statements for the Council minutes which may be released to the public are indicated by an asterisk; these statements may be obtained by following the procedure indicated above or from the Press Office.

JUSTICE AND HOME AFFAIRS

Joint scale for assessing threats to public figures visiting the European Union – EU Recommendation

The Council adopted a Recommendation for the creation of a joint scale for assessing threats to public figures visiting the European Union (8168/01).

Police cooperation to prevent and control violence and disturbances in connection with football matches with an international dimension – Resolution

The Council adopted a Resolution concerning a handbook with recommendations for international police cooperation and measures to prevent and control violence and disturbances in connection with football matches with an international dimension, in which at least one Member State is involved (13858/01).

European Police College (CEPOL)

The Representatives of the Governments of the Member States, meeting within the Council, adopted CEPOL’s financial regulation and 2002 budget (12872/01).

The Council also took note of CEPOL’s annual work programme for 2002 (12871/01).

SIRENE

The Representatives of the Governments of the Member States, meeting within the Council, adopted the budget for Sirene phase II and the Helpdesk for the year 2002.

SISNET

The Representatives of the Governments of the Member States, meeting within the Council, adopted SISNET’s budget for 2002 and the preliminary draft budget for the financial year 2002 for the SISNET network.
Europol – Negotiations for the exchange of personal data

The Council adopted a Decision amending Decision 2000/C 106/01 of 27 March 2000 authorising the Director of Europol to enter into negotiations on agreements with third States and non-EU-related bodies (13923/01). The Decision enables negotiations to be opened with Monaco and the Office for Drug Control and Crime Prevention.

Extension of Europol's mandate to deal with international crime

The Council adopted a Decision extending, as from 1 January 2002, Europol's mandate to deal with the serious forms of international crime listed in the Annex to the Europol Convention (14195/01 and 14196/01).

Second generation Schengen Information System (SIS II)

The Council adopted a Regulation and a Decision on the development of the second generation Schengen Information System (SIS II) (14160/01 and 14161/01).

Schengen – Catalogue of recommendations

The Council signified its agreement to the principles and objectives presented in the report by the Working Party on Schengen Evaluation on drawing up the Catalogue of recommendations and best practices and to the intention shortly to provide candidate States for accession to the European Union with a Catalogue on Borders, Readmission and Removal.

Protection of the euro against counterfeiting

The Council adopted:

- a Decision on the protection of the euro against counterfeiting (13436/01).
- an amendment to Framework Decision 2000/383/JHA on increasing protection by criminal penalties and other sanctions against counterfeiting in connection with the introduction of the euro (13437/01). This text concerns in particular the recognition of previous convictions.

Both texts seek to strengthen earlier first and third pillar measures against counterfeiting, including, in particular, counterfeiting of the euro.

Organised crime in the EU

Alignment of drug and diverted precursors seizure statistics

The Council adopted a Recommendation on the alignment of law enforcement drug and diverted precursors seizure statistics (12411/01).

EXTERNAL RELATIONS

Korean Peninsula Energy Development Organisation (KEDO)

The Council adopted:

• a Common Position on participation by the European Union in KEDO.

  The European Union's aim is to help find an overall solution to the issue of nuclear proliferation in the Korean peninsula. To that end, and in accordance with KEDO objectives, the European Union is joining this international action of great significance in the field of nuclear non-proliferation and nuclear safety;

• a Decision approving the conclusion, by the Commission, of the Agreement between the European Atomic Energy Community and the Korean Peninsula Energy Development Organisation (KEDO).