COUNCIL OF
THE EUROPEAN UNION

Brussels, 12 February 2003

15807/02

LIMITE

PV/CONS 76
JAI 313

DRAFT MINUTES

Subject 2477th meeting of the Council of the European Union (Justice, Home Affairs and Civil Protection) held in Brussels on 19 December 2002

1 Information relating to the final adoption of Council acts which may be released to the public is contained in Addendum 1 to these minutes.
<table>
<thead>
<tr>
<th></th>
<th>CONTENTS</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Adoption of the agenda</td>
<td>3</td>
</tr>
<tr>
<td>2</td>
<td>Approval of the list of A-items</td>
<td>3</td>
</tr>
<tr>
<td>3</td>
<td>Draft Protocol amending the Europol Convention</td>
<td>3</td>
</tr>
<tr>
<td>4</td>
<td>Draft Agreement between EU and USA on judicial co-operation in criminal matters and on extradition</td>
<td>4</td>
</tr>
<tr>
<td>5</td>
<td>Draft Council Framework Decision on combatting corruption in the private sector</td>
<td>4</td>
</tr>
<tr>
<td>6</td>
<td>Draft Council Framework Decision on confiscation of crime-related proceeds, instrumentalities and property</td>
<td>4</td>
</tr>
<tr>
<td>7</td>
<td>Draft Council Framework Decision on the execution in the European Union of confiscation orders</td>
<td>5</td>
</tr>
<tr>
<td>8</td>
<td>Draft Council Framework Decision combating racism and xenophobia</td>
<td>5</td>
</tr>
<tr>
<td>9</td>
<td>Draft Council Framework Decision on the application of the principle of mutual recognition to financial penalties</td>
<td>5</td>
</tr>
<tr>
<td>10</td>
<td>Any other business</td>
<td>6</td>
</tr>
<tr>
<td>ANNEX</td>
<td></td>
<td>7</td>
</tr>
</tbody>
</table>

"o"

"o o o"
1. **Adoption of the agenda**
   15641/1/02 OJ/CONS 70 JAI 300 REV 1

The Council adopted the above agenda, with the addition under "Other Business" of the following items:
- Presentation of "scoreboard" (Commission)
- Statement on sinking of "Prestige" off the Spanish coast (Spanish delegation)
- Danish initiative on disqualifications (Presidency)
- Comprehensive evaluation mechanism of implementation of acts and instruments relating to police and judicial co-operation in criminal matters (Presidency)

2. **Approval of the list of A-items**
   15743/02 PTS A 71 + COR 1 + ADD 1

The Council approved the "A" items listed in 15743/02 + COR 1 + ADD 1 with the exception of items 16 and 31.

Addendum 1 to these minutes gives information on items 20, 40, 47, 49, 50, 51 and 52 on that list.

Document references for the following items should read as follows:

37. 15465/02 PESC 574 COAFR 103
    15466/02 PESC 575 COAFR 104
    + COR 1 (fi)

38. 15459/02 PESC 570 COAFR 99
    15462/02 PESC 571 COAFR 100
    + COR 1 (fi).

3. **Draft Protocol amending the Europol Convention**
   13254/4/02 EUROPOL 76 REV 4

The Council reached a general approach in respect of the text of the draft Council Act, drawing up, on the basis of Article 43(1) of the Convention on the Establishment of a European Police Office (Europol Convention), a Protocol amending that Convention as set out in the annex to 13254/5/02 EUROPOL 76 REV 5.
The agreed text will be forwarded to the European Parliament to enable that institution to take account of it when drawing up its Opinion. The Joint Supervisory Body of Europol will also be consulted regarding the agreed text.

The Council took note of statements from the German, Danish and Italian delegations as set out in the Annex to these minutes.

4. **Draft Agreement between EU and USA on judicial co-operation in criminal matters and on extradition**

The Council took note of a Presidency report on the state of play of negotiations with the USA on the draft Agreement and future work to be undertaken with a view to reaching agreement on the package at one of its forthcoming sessions.

5. **Draft Council Framework Decision on combating corruption in the private sector**

The Council reached a general approach on the draft Framework Decision, subject to a number of parliamentary scrutiny reservations. The text resulting from the discussions in the Council is contained in 5282/03 DROIPEN 2.

6. **Draft Council Framework Decision on confiscation of crime-related proceeds, instrumentalities and property**

The Council reached a general approach on the draft Framework Decision, subject to a number of parliamentary scrutiny reservations. The text resulting from the discussions in the Council is contained in 5299/03 DROIPEN 3.

The Council held a first exchange of views on the question of sharing of assets confiscated in application of the Framework Decision, in order to obtain guidance for future work on the proposal. A majority of delegations favoured the sharing of confiscated assets or proceeds of the sale of confiscated property between the executing State and the issuing State on the basis of a fixed allocation, combined with a minimum threshold, unless otherwise agreed between the two States.

The Council invited the Permanent Representatives Committee to continue its work in the light of this discussion with a view to returning to the proposal at a forthcoming Council meeting.

8. **Draft Council Framework Decision combating racism and xenophobia**

The Council agreed to return to this item at one of its forthcoming meetings under the Greek Presidency.

9. **Draft Council Framework Decision on the application of the principle of mutual recognition to financial penalties**

The Council, on the basis of a Presidency compromise text, held a debate on the main outstanding questions of the draft Framework Decision.

In the light of the discussions, the Council instructed its relevant bodies to further examine the proposal on the basis of the Presidency text which was considered by a majority of delegations to be a good basis for reaching an agreement in the near future.

The outcome of the proceedings of the Council is contained in 5216/03 COPEN 1.
10. **Any other business**

- "**Scoreboard**" to review progress on the creation of an area of freedom, security and justice

  The Council heard a presentation by Commissioner Vitorino on the biannual update of the scoreboard (15774/02 JAI 311).

- **Protection of the environment through criminal law**

  The Council adopted the following statement:

  "The Council, having in mind the serious accident of the oil tanker PRESTIGE off the north west coast of Spain, welcomes the steps taken for the purpose of the rapid adoption of the draft Framework Decision on the protection of the environment through criminal law.

  In this context, the Council notes the conclusions of the European Council of 12 and 13 December 2002 regarding Maritime safety/marine pollution, that welcomes the action undertaken by the Commission to confront the consequences derived of that event and "its intention to examine the need for further specific measures" and, among them, "questions relating to liability and the corresponding sanctions". Therefore, in full consistency with the measures to be considered in accordance with the Community powers in the fields of protection of transport safety and protection of the environment, the Council should consider complementary measures to strengthen the protection of the environment, in particular the seas, through criminal law."

- **Information from Presidency on disqualifications and comprehensive evaluation mechanism**

  The Council was informed by the Presidency on the state of play concerning, on the one hand, the issue of increasing cooperation between European Member States with regard to disqualifications, and on the other hand, the issue of a comprehensive mechanism for evaluating the application and implementation at national level of acts and instruments relating to police and judicial cooperation in criminal matters.
Re item 3: Draft Protocol amending the Europol Convention

STATEMENTS

1. **Statement by the German delegation**

"With reference to the federal structure of the Federal Republic of Germany, the higher authorities of the Länder will continue to enjoy on-line access to the information system in accordance with Article 7(1) of the Europol Agreement through the Bundeskriminalamt (Federal Crime Office) as national authority."

2. **Statement by the Danish delegation**

"According to Article 39 of the Europol Convention as amended by the Protocol the national courts of the Member States competent to deal with disputes involving Europol’s liability as referred to in Article 39 shall be determined by reference to the relevant provisions of the Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.

In accordance with Article 1 and 2 of the Protocol on the position of Denmark annexed to the Treaty on European Union and to the Treaty establishing the European Community, Denmark did not participate in the adoption of Council Regulation (EC) No 44/2001, and is not bound by it or subject to its application.

**Denmark**, however, declares that it will apply the content of the relevant provisions in the abovementioned Regulation as regards the determination of the competent national courts of the Member States to deal with disputes involving Europol’s liability.

Denmark draws the attention to the fact that the European Commission 28 June 2002 has submitted a Recommendation for a Council Decision authorising the Commission to open negotiations for the conclusion of an agreement between the European Community and Denmark, extending to Denmark the provisions of Regulation (EC) No 44/2001."

3. **Statement by the Italian delegation**

"Having noted the Presidency's proposal for the amendment of the wording of Article 4(2), the Italian delegation confirms the central rôle of the Europol National Unit, as stated in the first sentence of Article 4(2).

As regards the possibility provided for in the second sentence of that paragraph, the Italian delegation – concerned that derogations from that principle may cause imbalances in the proper functioning of the entire Europol system and adverse effects on the determination of the competent national authorities – declares that as regards Italy no derogations will be granted from the central nature of the rôle of the Europol National Unit, which will remain the only competent point of contact."