COUNCIL OF THE EUROPEAN UNION

Brussels, 17 March 2010

16826/2/09
REV 2
LIMITE

PV CONS 65
JAI 889

DRAFT MINUTES ¹

Subject: 2979th meeting of the Council of the European Union (JUSTICE and HOME AFFAIRS), held on 30 November/1 December 2009

¹ Information concerning the final adoption of Council acts which may be released to the public may be found in Addendum 1 to these minutes.
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1. **Adoption of the agenda**  
   16575/09 OJ/CONS 65 JAI 871 COMIX 885

   The Council adopted the agenda as set out in 16575/09.

2. **Approval of the list of "A" items**  
   16577/09 PTS A 56

   The Council adopted the list of A items as set out in 16577/09.

   The Latvian delegation requested that a statement be entered in these minutes concerning  
   "A" item 7 (Council Decision on the signing by the European Community of the Protocol to  
   the Convention on International Interests in Mobile Equipment on Matters Specific to  
   Railway Rolling Stock, adopted in Luxembourg on 23 February 2007).

   The Cypriot delegation requested that a statement be entered in these minutes concerning  
   "A" item 18 (Draft Council Decision determining the list of third States and organisations  
   with which Europol shall conclude agreements).

   Furthermore, the Commission requested that a statement be entered in these minutes  
   concerning "A" item 24 (Draft Council conclusions on model provisions, guiding the Council  
   Criminal Law deliberations).

   These three statements are set out in the Annex.

   Information relating to items 10, 11, 21, 30 and 54 is set out in Addendum 1 to these minutes.
The documents in items 1, 2, 8, 16, 17, 18, 24 and 34 should read as follows:

Item 1: 15505/1/09 REV 1 PROCIV 173 POLGEN 180 CAB 57 ENV 772
         SAN 300 TRANS 443 CODUN 41 CONOP 91 CHIMIE 93
         COPEN 221 DROIPEN 150 CRIMORG 168 JAI 795 ATO 134
         RECH 385 RELEX 1020 COTER 125 PHARM 21 PESTICIDE 19
         VISA 383 ENFOCUSTOM 123 ENFOPOL 281 IND 149 AGRI 488
         AGRILEG 207 VETER 56 DENLEG 112
         + REV 1 COR 1
         + REV 1 COR 2
         + REV 2 (sl)

Item 2: 15394/09 PROCIV 171 JAI 780 ENV 761 FORETS 110 AGRI 483 RECH 378
         SAN 295 TELECOM 232 RELEX 1007 ELARG 91 MED 43
         ECOFIN 698 ATO 133 CHIMIE 92 COHAFA 45 CONUN 115
         COWEB 248 COEST 387
         + REV 1 (sv)

Item 8: 15876/09 ENFOPOL 288 CORDROGUE 72
         + REV 1 (et)

Item 16: 16035/09 EUROPOL 105
         15140/09 EUROPOL 92
         + REV 1 (en)
         + REV 2 (fi)

Item 17: 16032/09 EUROPOL 103
         15138/09 EUROPOL 90
         + COR 1 (fi)
         + REV 2 (en)

Item 18: 16033/09 EUROPOL 104
         + ADD 1
         15139/09 EUROPOL 91
         + COR 1 (fi)
         + REV 2 (en)

Item 24: 16798/09 JAI 886 DROIPEN 163
         16542/2/09 REV 2 JAI 868 DROIPEN 160
         + REV 3 (sv)

Item 34: 16335/09 SIRIS 160 SCHENGEN 57 COMIX 867
         15983/09 SIRIS 154 SCHENGEN 52 COMIX 845
         + COR 1 (fi)
3. **SIS II**  
   – Conclusions  
   16811/09 JAI 888 SIS-TECH 122 SIRIS 171 COMIX 901

The Council conclusions on SIS II were approved as set out in 16811/1/09 REV 1.

4. **Council Decision authorising the signature of an agreement between the EU and Japan on mutual legal assistance in criminal matters**  
   – Adoption  
   15915/09 COPEN 227 COASI 202  
   15921/09 COPEN 228 COASI 203  
   + REV 1 (de)

The Council adopted the Decision on the signing, on behalf of the European Union, of the Agreement between the European Union and Japan on mutual legal assistance in criminal matters.

The Netherlands made the following remarks:

1. Articles 18 and 25 are unclear. There is no obvious need for Article 19. If the negotiations had been continued, these points should have been addressed;
2. Regarding Article 29, the Netherlands sought confirmation that the Caribbean parts of the Kingdom of the Netherlands could be brought into the territorials scope of the Agreement.

France made a statement regarding Article 23, set out in the Annex.

Spain made the statement regarding Gibraltar, set out in the Annex.
The following delegations made statements under Article 24(5) of the Treaty on European Union: The Czech Republic, Germany, Finland and Spain, set out in the Annex.

5. **Council Decision authorising the signing of an Agreement between the European Union and the United States of America on the processing and transfer of Financial Messaging Data for purposes of the Terrorist Finance Tracking Programme**

   - **Adoption**
     
     16110/09 JAI 838 USA 101 RELEX 1082 DATAPROTECT 73 ECOFIN 805
     + COR 1 (fr)
     + COR 2 (hu)
     + COR 3 (el)
     + COR 4 (cs, es, et, lv)
     + REV 1 (fi)
     + ADD 1

   **CONFIDENTIEL UE**

   The Council adopted the Decision on the signing of the EU-US Agreement on the processing and transfer of Financial Messaging Data from the European Union to the United States for purposes of the Terrorist Finance Tracking Programme, as set out in 16110/09. Four Member States abstained from voting: Germany, Greece, Hungary and Austria.

   The Council also approved the confidential annex to that Agreement, in which the Parties designated an international provider of financial messaging services under the Agreement.

   The Council statement and the joint Council/Commission statement made upon the adoption of the above Council decision are set out in the Annex.

   Statements made by Germany, Luxembourg, Hungary, the Netherlands and Austria are also set out in the Annex.

   The following delegations made statements under Article 24(5) of the Treaty on European Union: the Czech Republic, Finland, Germany and Poland, as set out in the Annex.
6. **Multi-annual strategic work programme in the area of Freedom, Security and Justice (The Stockholm Programme)**  
   - General Debate  
   (public deliberation pursuant to Article 8(3))  
   16484/1/09 REV 1 JAI 866  
   + REV 1 ADD 1

Home Affairs Ministers had a general discussion on the multi-annual strategic work programme in the area of Freedom, Security and Justice, the so-called Stockholm Programme (2010-14).

The discussion showed a broad consensus on the text with some proposals for minor changes that were made in the course of the meeting on its second day. (see also item 12)

A statement made by Malta is set out in the Annex.

7. **Common European Asylum System**
   = **State of play**  
   (public deliberation pursuant to Article 8 (3))  
   15414/09 ASILE 85 EURODAC 43 CODEC 1271

   = **Proposal for a Directive of the European Parliament and of the Council on minimum standards on procedures in Member States for granting and withdrawing international protection (Recast)**  
   – Presentation by the Commission and first exchange of views  
   (public deliberation pursuant to Article 8 (1)(a))  
   14959/09 ASILE 82 CODEC 1231

   = **Proposal for a Directive of the European Parliament and of the Council on minimum standards for the qualification and status of third country nationals or stateless persons as beneficiaries of international protection and the content of the protection granted (Recast)**  
   – Presentation by the Commission and first exchange of views  
   (public deliberation pursuant to Article 8 (1)(a))  
   14863/09 ASILE 81 CODEC 1224  
   + REV 1 (de, fr, en)

The Council, on the basis of the progress report prepared by the Presidency (15414/09), discussed the state-of-play of discussions on the legislative proposals making up the Common
European Asylum System (CEAS). The discussion focused in particular on the proposals amending the Procedures Directive (14959/09) and the Qualification Directive (14863/09) following their presentation by the Commission. In the context of the discussions on the CEAS, the Presidency also reported that, following a lunch discussion, agreement had been reached on Valetta, Malta, as the location of the seat of the European Asylum Support Office.

8. **Council Regulation amending Regulation (EC) No 539/2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and whose nationals are exempt from that requirement**
   - Adoption
     16355/09 VISA 403 COWEB 277 COMIX 871
     15521/09 VISA 384 COWEB 252 COMIX 824

The Council adopted a Council Regulation amending Regulation (EC) No 539/2001 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, as set out in 15521/09.

9. **Counter-terrorism: 6-monthly report by the Counter-terrorism Coordinator**
   - Presentation and debate on certain issues
     15358/09 JAI 772 ECOFIN 694 TRANS 435 RELEX 998 ECO 127 PESC 1459 COTER 122 ENFPOL 277 COSDP 1039 PROCIV 167 ENER 363 ATO 131 DATAPROTECT 67 TELECOM 230
     + ADD 1 REV 1
     15359/1/09 REV 1 JAI 773 ECOFIN 695 TRANS 436 RELEX 999 ECO 128 PESC 1460 COTER 123 ENFPOL 278 COSDP 1040 PROCIV 168 ENER 364 ATO 132 DATAPROTECT 68 TELECOM 231

The CTC focused his presentation on the perception of the terrorist threat in the EU as well as on the implementation of the 2005 strategy and identified i.a. prevention and consequence management as a priority for further action. Moreover, he highlighted the importance of greater consideration of the situation of victims and insisted on radicalisation prevention, information exchange, public-private partnership and external relations in the fight against terrorism.
10. **External relations**
   – Orientation debate
   16314/09 JAIEX 88 RELEX 1095 ASIM 131 CATS 125 JUSTCIV 242 USA 103
   NIS 134 COWEB 274

   (a) **Outcome and follow-up of the EU-US Ministerial Troika (28 October 2009)**

   (b) **Outcome and follow-up of the EU-Western Balkans Ministerial Forum on JHA**
   (16-17 November 2009)

   (c) **Preparation of the EU-Russia Ministerial PPC (Freedom, Security and Justice)**
   (2 December 2009)
   – information

   The Council was informed by the Presidency of the ministerial meetings with the US, with the
   Western Balkans and with Russia. Starting from 2010, the Washington Statement will be
   implemented. Data protection issues will i.a. be on the agenda with Russia.

   The United States emphasised the need for a comprehensive approach towards Russia,
   including the Visa dialogue, migration and data protection.

   (d) **Results and follow up to the Global Forum on Migration and Development**
   (Athens 4-5 November 2009)

   The Greek delegation provided information on the outcome of the third session of the
   Global Forum on Migration and Development, held in Athens on 4-5 November 2009,
   and of its follow-up.
NON-LEGISLATIVE ACTIVITIES

11. Approval of the list of "A" items
16808/09 REV 1 PTS A 58

The Council adopted the list of "A" items as set out in 16808/09 REV 1.

Statements were made for the Council minutes by Malta and Romania (jointly) and Spain, Estonia, France and Poland (jointly) concerning "A" item 2 (Council Decision laying down measures for the implementation of the European Council Decision on the exercises of the Presidency of the Council). These are set out in the Annex.

The documents in items 1 and 2 should read as follows:

Item 1: 16182/09 JUR 458 POLGEN 193
+ COR 1
16525/09 JUR 495 POLGEN 206
+ COR 1 (sl)
+ REV 1 (sk)

Item 2: 16824/09 POLGEN 226 INST 195
+ ADD 1
+ ADD 2 REV 1
16517/09 POLGEN 202 INST 173

12. Multi-annual strategic work programme in the area of Freedom, Security and Justice
(The Stockholm Programme)
– General Debate
(public debate pursuant to Article 8 (2))
16484/1/09 REV 1 JA1 866
+ REV 1 ADD 1

Justice Ministers had a general discussion on the multi-annual strategic work programme in the area of Freedom, Security and Justice, the so-called Stockholm Programme (2010-14). The discussion showed a broad consensus on the text with some proposals for minor changes.
The Presidency circulated, at the end of the debate, a room document proposing some amendments to selected paragraphs of the text submitted, as a result of the two-days discussion in the Council. The Presidency made it clear that it is for the European Council to adopt the Programme, but work will continue on the text on the basis of the amended text.

The Commission noted that it needs to examine further amendment n° 9.

The adoption is foreseen at the European Council on 10/11 December 2009.

LEGISLATIVE DELIBERATIONS

13. **Combating sexual abuse, exploitation of children and child pornography**
   - State of play
     16193/09 JAI 844 DROIPEN 157 CATS 124
     + COR 1

There was no discussion on this point. It was mainly an information point on the state of play of the negotiations on this file, on the basis of 16193/09.

The United Kingdom and Germany took the floor to praise the work of the Swedish Presidency. The United Kingdom stressed the necessity of avoiding, in every new instrument to be proposed by the European Commission on this issue, criminalisation of legal sexual activities of young people. Furthermore, this delegation stressed the necessity for a clear and simple penalties system.

The European Commission was urged to proceed as soon as possible to a proposal of a new instrument under the Lisbon Treaty, on the basis of the state of play of the discussions on this file.
14. **Transfer of proceedings in criminal matters**

— Orientation debate
16437/1/09 REV 1 COPEN 231
+ REV 1 COR 1

The Council held an orientation debate concerning the substance of the future instrument concerning the transfer of proceedings in criminal matters. The views expressed by the delegations during the debate will be a basis for the establishment of the new proposal in the future.

The proposal was presented in June 2009 by 16 Member States jointly taking the initiative. These Member States are: BE/BU/CZ/ DK/EE/EL/ES/FR/LT/LV/HU/NL/RO/SI/ SK/SE. Since early July the Council Preparatory bodies have been examining the proposal and at this moment four readings of the text have been concluded. The majority of the text of the proposal is agreed among the delegations. However, the most important controversial issue remained unsolved: Article 5 (scope of jurisdiction, establishing of secondary jurisdiction).

In the Council the Presidency pursued the debate in order to prepare the ground for the future proposal of an Instrument on transfer of Proceedings in criminal matters under the TFEU (Member States or Commission initiative).

The following questions were asked:

1. should those Member States that have ratified the 1972 Council of Europe Convention be able to continue their cooperation on the basis of that Convention?
(2a) should the Union have a system of transfer of criminal proceedings which does not represent only a lowest common denominator?

(2b) if the answer to that question is positive: to what extent should subsidiary jurisdiction be established; and, if that is the case, which jurisdictional principles should be guiding future work in this area within the Union?

The discussion started with the opening remarks by the Commission in which it supported the principle objectives of the instrument. The Commission expressed its intention to present a new instrument concerning transfer of proceedings in criminal matters in the future.

A majority of delegations took the floor referring in their answers to the above questions. While all delegations expressed their support for the objectives pursued by the discussed instrument, their views concerning the issue of the scope of jurisdiction were divided into two main camps. One group of delegations opposed any provision extending the scope of jurisdiction in cases of transfer of proceedings further than foreseen in accordance with the principle of territoriality or, exceptionally, also in accordance with principles of active and passive personality. The other group stated that only an ambitious solution, along the lines of the provision found in Article 2 of the Council of Europe Convention on the transfer of proceedings in criminal matters, would be acceptable.

The Chairperson concluded that in view of the general support among the delegations for the objectives pursued by the discussed project, the opinions expressed by the delegations should be taken into account by the Commission when preparing a new proposal under the TFEU regime.
15. Trafficking in human beings  
   (a) preventing and combating trafficking in human beings, and protecting victims  
      – Orientation debate  
       16772/09 DROIPEN 162 MIGR 108  

The proposal for a Council Framework Decision on preventing and combating trafficking in human beings, and protecting victims, repealing Framework Decision 2002/629/JHA was submitted by the Commission on 26 March 2009.

At the previous Justice and Home Affairs Council on 23 October 2009, the Council took note of the state of play and resolved most of the outstanding issues in the text of the proposal, which allowed to get very close to an agreed text, including the recitals (Denmark, Germany, Ireland, France, Slovenia, the Netherlands and Sweden still have a parliamentary scrutiny reservation on the proposal). However, the original intention to have a political agreement at this Council was abandoned due to the entry into force of the Lisbon Treaty.

The Council endorsed the substance of the text, as a reflection of the collective views in the Council at the present time on this issue, on the understanding that the matter will have to be examined at a later stage in the light of the Lisbon Treaty.

The Commission welcomed the result of the negotiations. However, as expected, the Commission reiterated their wish for specific and higher levels of penalty (Article 3) and free legal aid to minors. It intended to table again the proposal as quickly as possible, using as the basis the agreed text. Germany expressed its "overwhelming support" for the text, but due to internal deliberations of the German Parliament, Germany had to maintain its reservations on Articles 1(3) and 3(2)(c). Finally, the Netherlands stressed the importance of an effective protection of victims of human trafficking, and the need for a proper coordination of THB within the Council, the subject-matter encompassing the JHA-area, reaching into areas such as migration, employment and relations to third countries (of origin).
NON-LEGISLATIVE ACTIVITIES

15.  (b)  =  Action oriented paper on strengthening the EU external dimension regarding action against trafficking in human beings
       – Adoption
         (public debate pursuant to Article 8(2))
         11450/5/09 REV 5 CRIMORG 103 JAIEX 49 RELEX 618 JAI 432

       =  2009 October Declaration on trafficking in human beings
          15348/1/09 REV 1 CRIMORG 167 JAIEX 81 RELEX 1006 JAI 779

       =  Thematic debate on THB
          16723/09 CRIMORG 176 JAIEX 92 RELEX 1141 JAI 883 DROIPEN 161 MIGR 107

The Council approved the thematic Action Oriented Paper (AOP). The Presidency stated that the main aim of the AOP was to address the external dimension of trafficking by strengthening partnerships with third countries, regions and international organisations, as well as strengthening and improving the co-ordination of the external dimension on THB internally within the EU.

The United Kingdom welcomed the comprehensive approach, and underlined that focus should be on implementing existing measures and strengthening the internal EU coordination.

16.  e-Justice
       – State of play
         (public debate pursuant to Article 8 (2))
         16460/09 JURINFO 144 JAI 865 JUSTCIV 244 COPEN 235

The Council took note that the European e-Justice portal, scheduled to be launched at the end of 2009, was delayed. Several Member States expressed their disappointment at this. Despite the regrets, the general approach was constructive.
The Commission explained the measures it was implementing with its contractor UNISYS to remedy the situation and to launch the portal as soon as possible in the first half of 2010.

The Working Party on e-Justice was invited to continue work on the implementation of the portal, in particular by providing input and follow-up to the work of the Commission on the content and technical solutions for the European e-Justice portal on the basis of the priorities and the timetable defined in the action plan.

The Council requested the Commission to take all possible measures to ensure the delivery of the first release of the European e-Justice portal in the first half of 2010.

The Working Party was instructed by the Council to submit a report on the state of play by the end of the first semester of 2010.

17. **Any Other Business**

   = **Implementation of the Lisbon Treaty**
     (request by the Commission)
     – Possibility of notification according to Article 35.2 TEU
       (request by the Commission)

The Commission provided information on the changes the Lisbon Treaty made in the JHA area and recommended the Member States that had not yet done so, to make a declaration under Article 35 paragraph 2 of the Amsterdam Treaty as soon as possible. The Commission also outlined its plans for "Lisbonisation" of Framework Decisions.
Follow-up of the June European Council conclusions on the Immigration in the Mediterranean and the situation of the FRONTEX operations budget (request by the Commission)

The Commission gave the Council an update on the follow-up to the June 2009 European Council conclusions concerning immigration in the Mediterranean and, in particular, the situation of Frontex.

EUPOL Staff in Afghanistan (request by the Netherlands)

The Dutch delegation gave information on its visit to Afghanistan one month ago and stated that the quota of 400 persons had not yet been fulfilled (currently 270 persons). The Dutch delegation, supported by the Presidency, asked the Member States to do so rapidly.

Information on the Venice Conference 23-24 November (request by Italy)

Due to lack of time, information was given via other channels.
Annex

Statements for the Council Minutes

Ad "A" item 7 (list 16577/09 PTS A 56):


Statement by Latvia

"The specificity of Latvia is a railway network of a 1520 mm track gauge (hereinafter "1520 system") which differs from the main railway system in the Community which has a 1435 mm track gauge. This national railway network is part of a larger 1520 system rail network located in Eurasia which has similar technical standards and operating rules and which is fully interoperable. A particular operational feature of this network is the usage of the Common Wagon Fleet – i.e. usage of freight wagons under the Agreement on goods wagons and container fleet of the former USSR Ministry of Railways Division between the CIS Member States, Azerbaijan, Georgia, Latvia, Lithuania and Estonia, and its further common use – which allows the most efficient use of wagons. Freight traffic from these non-Community countries makes a significant contribution to the Latvian economy.

Latvia takes note that neither the Cape Town Convention nor the Luxembourg Protocol foresees an obligation for the Contracting States to register their railway rolling stock in the International Registry. It points out that the present practice of the use of the Common Fleet Wagon is incompatible with the requirements of the Cape Town Convention and the Luxembourg Protocol. Taking into account the necessity for Latvia to maintain the Common Wagon Fleet system (several exceptions are already provided for in EU legislation) Latvia recalls that the Common Fleet Wagons may not be used to provide international guaranties under the Luxembourg Protocol and that these wagons will not be registered in the International Registry."

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16826/2/09 REV 2
Annex

CAB

Limite En
Ad "A" item 18 (list 16577/09 PTS A 56):

Draft Council Decision determining the list of third States and organisations with which Europol shall conclude agreements

STATEMENT BY THE REPUBLIC OF CYPRUS

"Cyprus is not in a position to give its agreement for the adoption of the item Draft Council Decision determining the list of third States and organisations with which Europol shall conclude agreements (doc. 15139/1/09 REV 1 EUROPOL 91) because of the continuous refusal of Turkey to cooperate with Cyprus in the field of police and judicial matters.

More precisely, Turkey has not shown yet any sign of collaboration in the above fields. INTERPOL Ankara refuses to cooperate directly with INTERPOL Nicosia, does not respond to any requests from INTERPOL Nicosia and refuses to address the Republic of Cyprus on any related matter. This situation prevents any cooperation in the fields of justice, policing, surveillance of illegal activities and exchange of relevant information, which are the cornerstones of INTERPOL and EUROPOL cooperation.

Despite the fact that the need for cooperation with Cyprus has been raised repeatedly by INTERPOL's General Secretariat with the authorities of Turkey, the problem remains due to Turkey's negative stance.

Under the above mentioned circumstances the Republic of Cyprus is not in a position to give its consent for the inclusion of Turkey in the list of third States and organisations with which Europol shall conclude agreements, and for this reason it will vote against the adoption of the Draft Council Decision determining the list of third States and organisations with which Europol shall conclude agreements (doc. 15139/1/09 REV 1 EUROPOL 91)."

__________________________
Ad "A" item 24 (list 16577/09 PTS A 56):

Draft Council conclusions on model provisions, guiding the Council
Criminal Law deliberations

STATEMENT BY THE COMMISSION

"The Commission fully shares the objective to ensure consistency in European Union legislation relating to criminal law. However, the Commission considers the Guidelines and model provisions contained in the Council's Conclusions are premature and restrict the interpretation of Article 83 of the Treaty on the Functioning of the EU (TFEU). By issuing such guidelines and model provisions the Council unilaterally establishes a framework for future legislation to which neither the Commission nor the European Parliament agreed. The Commission therefore declares that these guidelines and model provisions are without prejudice to its right of initiative in accordance with the TFEU. The Commission also declares that it will exercise this right with due care and based on an impact assessment following appropriate consultations."

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Ad item 4 of the agenda: Council Decision authorising the signature of an agreement between the EU and Japan on mutual legal assistance in criminal matters

STATEMENT BY FRANCE
regarding Article 23

"The French Republic declares that it interprets the provisions of Article 23(1)(a) of the Agreement between the European Union and Japan on mutual legal assistance in criminal matters to mean that a person who is invited or required to appear before the judicial authorities of the requesting State, in order to account for acts for which they are being prosecuted, may not be subject to detention or any restriction of personal liberty by reason of any conduct or conviction that precedes the departure of the person from the requested State and which is not referred to in the summons."
STATEMENT BY SPAIN regarding Gibraltar

"Should the present "Mutual Legal Assistance Agreement between the European Union and Japan" be applied to Gibraltar, Spain wish to make the following declaration:

1. Gibraltar is a Non-Self-Governing Territory for whose international relations the Government of the United Kingdom is responsible and which is subject to a process of decolonization in accordance with the relevant decisions and resolutions of the General Assembly.

2. The Gibraltarian authorities are local in character, and exercise an exclusively domestic jurisdiction that originates in and is based on the powers allocated to and conferred on them by the United Kingdom, in accordance with its domestic legislation and in its capacity as the sovereign State upon which depends the said Non-Self-Governing Territory.

3. Consequently, any involvement by the Gibraltarian authorities in the implementation of the present Agreement shall be understood to take place exclusively within the framework of the domestic jurisdiction of Gibraltar and shall not be considered to affect in any way the content of the two preceding paragraphs.

4. The procedure in paragraph 2 of the "Arrangements relating to the Gibraltarian authorities in the context of the EU and EC instruments and related treaties (2000)" agreed by the United Kingdom and Spain on 19 April 2000 and copied to the Secretary General of the Council of the European Union and the use of the authority of the United Kingdom specified in paragraph 3 are applied to the present Agreement."

STATEMENT BY THE CZECH REPUBLIC

"In accordance with Article 24(5) of the Treaty on European Union, the Czech Republic states that it has to comply with the requirements of its constitutional procedure in order to be bound by the Agreement between the European Union and Japan on mutual legal assistance in criminal matters."

STATEMENT BY THE FEDERAL REPUBLIC OF GERMANY

"In accordance with Article 24(5) of the Treaty on European Union, the Agreement between the European Union and Japan on mutual legal assistance in criminal matters will not become binding upon the Federal Republic of Germany until Germany's constitutional procedure in this respect has been completed and the Council of the European Union has been notified of its completion."
STATEMENT BY THE REPUBLIC OF FINLAND

"Finland states in accordance with Article 24(5) of the Treaty on European Union that it has to comply with the requirements of its own constitutional procedure and that the Agreement will not be binding on it until procedure has been concluded."

STATEMENT BY SPAIN

"In accordance with article 24.5 TUE, Spain declares that she will not be bound by the Agreement of Legal Mutual Assistance between the EU and Japan, as long as the internal constitutional requirements will not be fulfilled."

Ad item 5 of the agenda: Council Decision authorising the signing of an Agreement between the European Union and the United States of America on the processing and transfer of Financial Messaging Data for purposes of the Terrorist Finance Tracking Programme

STATEMENT BY THE COUNCIL

"The Council calls upon the Commission to submit as soon as possible, and at any rate no later than February 2010, a recommendation to the Council for the negotiation of a long-term EU-US Agreement on the processing and transfer of financial messaging data from the European Union to the United States for purposes of the Terrorist Finance Tracking Programme (TFTP). Such recommendation should be directed at establishing a European legal basis for such co-operation with the United States, fully safeguarding individuals' data protection rights. The current Agreement is without prejudice to any provisions in the long-term agreement, in particular as regards to the issues of redress or transmission of data to third countries.

Upon receipt of this recommendation, the Council shall endeavour to adopt as soon as possible a decision authorising the opening of negotiations."
JOINT STATEMENT BY THE COUNCIL AND THE COMMISSION

"In order to allow the European Parliament to give its consent to the conclusion of this Agreement, the Commission and the Council commit themselves to inform the Parliament immediately and fully at all stages of the procedure."

STATEMENT BY THE FEDERAL REPUBLIC OF GERMANY

"Although considerable progress has been made, Germany cannot agree to the Agreement between the European Union and the United States of America on the processing and transfer of financial messaging data from the European Union to the United States for purposes of the Terrorist Finance Tracking Programme. In particular, data subjects' rights, including a right to effective judicial protection and to erasure of data, and provisions designed to limit the data to be supplied in terms of offences, keep the amount of data small and strictly confine use of data to the purpose for which they were supplied are, in Germany's view, not fully specified and satisfactorily regulated. Nor can Germany find any provision ensuring that data received are used in criminal proceedings only with the consent of the EU Member State from which the data originated.

Germany sees a pressing need for further improvements in these respects, in particular, in negotiations for a permanent agreement. Shortening the life of the interim agreement will make for swifter conclusion of a permanent agreement."

STATEMENT BY LUXEMBOURG

"Luxembourg shares the concerns expressed by the German and Austrian delegations, amongst others. Steps should be taken to enable a discussion to take place in Council soon, on the basis of negotiating directives to be submitted under the Lisbon arrangements, in order to secure increased EP involvement.

Luxembourg would like further guarantees to be included in the negotiating directives, in particular with regard to appeals.

Having heard statements from the Presidency and the Commission, particularly regarding the interim nature of the agreement, the extra guarantees which it provides as compared with the existing situation and the fact that the EP will be required to approve this interim agreement, Luxembourg is able to go along with the majority."
STATEMENT BY HUNGARY

"Hungary attaches utmost importance to the smooth functioning of the US Terrorist Finance Tracking Programme and acknowledges the added value of the TFTP for the security of both the US and the EU. Nevertheless without designating publicly the data controller ("designated service provider"), according to Hungary's assessment, the Agreement does not satisfy some of the fundamental data protection requirements. Hungary expects this problem to be solved in the long-term EU-US agreement."

STATEMENT BY THE NETHERLANDS

"In case a request for mutual legal assistance is made on the basis of the Agreement, the Netherlands will only be able to grant mutual legal assistance if Article 4, paragraph 1, of the Agreement means that the request for mutual legal assistance by the US must be based on concrete indications or a concrete suspicion, in relation to a criminal investigation."

STATEMENT BY AUSTRIA

"Austria regards the interim agreement now being decided on with regard to SWIFT as no more than a step towards exchanging data as required in combating the funding of international terrorism and towards protecting the data of innocent citizens. We also welcome the shortening of the interim agreement's life to nine months, which will make for swifter conclusion of a final agreement. Austria is therefore abstaining.

In negotiations for a longer term agreement, allowance needs to be made especially, in conjunction with the European Parliament, for the data protection reservations previously raised.

On legal protection for data subjects (information, rectification and erasure rights), in particular, there is a need to find suitable ways of resolving the issue so that law enforcement can also be ensured in the United States.

In particular, any future agreement must include provisions duly regulating the passing on of data to third countries, especially, in a manner meeting European data protection standards. The types of data covered by processing also need to be precisely spelt out."
STATEMENT BY THE CZECH REPUBLIC

"In accordance with Article 24 (5) of the Treaty on European Union, the Czech Republic states that it has to comply with the requirements of its constitutional procedure in order to be bound by the Agreement between the European Union and the United States of America on the processing and transfer of Financial messaging Data from the European Union to the United States for purposes of the Terrorist Financing Tracking Programme."

STATEMENT BY THE REPUBLIC OF FINLAND

"Finland states in accordance with Article 24(5) of the Treaty on European Union that it has to comply with the requirements of its own constitutional procedure and that the Agreement will not be binding on it until procedure has been concluded."

STATEMENT BY THE FEDERAL REPUBLIC OF GERMANY

"In accordance with Article 24(5) of the Treaty on European Union, the Agreement between the European Union and the United States of America on the processing and transfer of financial messaging data from the European Union to the United States for purposes of the Terrorist Finance Tracking Programme will not become binding upon the Federal Republic of Germany until Germany's constitutional procedure in this respect has been completed and the Council of the European Union has been notified of its completion.

In view of persisting data protection reservations, Germany cannot envisage any such notification before the Agreement expires as laid down in Article 15(3) thereof."

STATEMENT BY THE REPUBLIC OF POLAND

"The Republic of Poland states that the Agreement shall become binding on it and shall be applied provisionally from the date of conclusion of its internal constitutional procedures."
**Ad item 6 of the agenda:** Multi-annual strategic work programme in the area of Freedom, Security and Justice (The Stockholm Programme)

**STATEMENT BY MALTA**

"Malta declares that its acceptance of the wording in the first bullet of section 5.1 on the "Integrated management of the external borders" of chapter 5 of the Stockholm programme cannot be interpreted as modifying the Convention on Safety of Life at Sea (SOLAS) and the Search and Rescue Convention (SAR) as they are applied by Malta.

Malta further declares that it expects the Commission, in putting forward any proposals under the first bullet of section 5.1, to recognise the general difficulties faced by Member States when carrying out operations at sea and the specific difficulties related to identifying persons in need of protection when these are travelling in mixed flows as well as the importance of not proposing procedures that could be abused and thereby undermine the counteraction of illegal immigration and cross-border crime.

Furthermore, Malta also declares that for the Dublin System to retain moral and legal legitimacy the difficulties being encountered by Member States facing particular pressures need to be reviewed regularly from the perspective of effective solidarity."

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Ad "A" item 2 (list 16808/09 REV 1 PTS A 58):

Council Decision laying down measures for the implementation of the European Council Decision on the exercises of the Presidency of the Council

STATEMENT BY MALTA AND ROMANIA

"Malta and Romania welcome the Decision of the Council laying down measures for the implementation of the European Council Decision on the exercise of the Presidency of the Council.

Having in mind the proposed modalities for appointing the chairs of the preparatory bodies of the Foreign Affairs Council, Malta and Romania consider that the review of the procedures that shall be made in the framework of the status report on the EEAS, foreseen for 2012, shall be a comprehensive one and shall include the duration of Chair’s mandates."

STATEMENT BY SPAIN, ESTONIA, FRANCE AND POLAND

"Spain, Estonia, France and Poland note that the scope and organisation of working structures in foreign affairs are to be reviewed soon after the entry into force of the Treaty of Lisbon, particularly as regards the division of labour between the various thematic and geographical bodies responsible for development policy and relations with developing countries.

Spain, Estonia, France and Poland would point out that they are anxious to have that review carried out as soon as possible, in the interests of consistency and efficiency."