ADDENDUM to DRAFT MINUTES

Subject: 2579th meeting of the Council of the European Union (JUSTICE and HOME AFFAIRS), held in Luxembourg on 29 and 30 April 2004

1 The information from the Council minutes which is contained in this Addendum is not confidential and may therefore be released to the public.
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Agenda items released to the public concerning the final adoption of Council acts

"A" items: (list: 8847/04 PTS A 19 + ADD 1)

When finally adopting the "A" items relating to legislative acts, the Council agreed to enter the following in these minutes:


8303/04 JUSTCIV 62  
+ COR 1 (it)  
+ COR 2 (fi)  
+ COR 3 (es)  
+ COR 4 (nl)  
+ COR 5 (fr)  
+ COR 6 (sv)

The Council adopted the above Directive. (Legal basis: Article 308 of the Treaty establishing the European Community)

1. **Joint statement by the United Kingdom and Germany on the occasion of the adoption of the Directive relating to compensation to crime victims:**

   "Due to the special importance and urgency of adopting measures relating to compensation to victims of crime at a European level, the United Kingdom and Germany do not oppose Article 308 EC Treaty as the legal base for this Directive. The adoption of this Directive should not constitute a precedent for the future application of that Article."

2. **Statement by Malta and Slovakia**

   "Malta and Slovakia support the joint unilateral declaration made by the United Kingdom and Germany on the use of Article 308 of the Treaty establishing the European Community as a legal basis for the adoption of the Directive relating to compensation to crime victims."
Item 7. Council Regulation concerning the introduction of some new functions for the Schengen Information System, including in the fight against terrorism
7575/04 SIRIS 42 SCHENGEN 3 COMIX 198 OC 245

The Council adopted the above Regulation. (Legal basis: Article 66 of the Treaty establishing the European Community)

3. Statement by Germany

"Germany welcomes the agreement that has been reached on the SIS Regulation which was based on an initiative put forward by Spain. Germany would continue to argue that the authorities that issue residence permits for aliens need access to data on aliens in accordance with Article 95 of the Schengen Convention. Germany assumes that the Member States will soon reach consensus on this issue in the context of further discussions on the development of the SIS, and suggests that a specific brief should be given to the relevant working party.

On the occasion of the pending adoption of the draft Council Decision (see 10054/03 SIRIS 48 SCHENGEN 5 OC 343 COMIX 351) Germany wishes also to make the following statement:

Germany would point out that national members of Eurojust and their assistants, when carrying out their work for Eurojust, are not subject to national law but only to the Eurojust Decision. The technical arrangements for access to the SIS by national members of Eurojust must therefore be determined by the Council. Germany proposes that a technical access model be developed that is similar to that chosen for the partial participation of the United Kingdom and Ireland in the SIS.

Germany would also draw attention to the fact that the different wordings used in Article 101a(1) and 101b(1), under which only Europol is to have the right to search SIS data "directly", do not necessarily mean that no provision may be made for direct access by Eurojust (for the national members of Eurojust and their assistants).

Germany welcomes the agreement that has been reached on the SIS Decision which was based on an initiative put forward by Spain and would continue to argue that it is absolutely essential for Eurojust to have access to data in accordance with Article 100 of the Schengen Convention. Germany assumes that a start will be made without delay on examining the question of extending Eurojust's access to further categories of data, as already proposed at the Council meeting on 19 December 2002, taking account of the requirements set out in the letter from the Eurojust College. Germany also assumes that the Member States will soon reach consensus on these issues in the context of further discussions on the development of the SIS, and suggests that a specific brief should be given to the relevant working party."
Item 14. Council Directive on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities

The Council adopted the above Directive. (Legal basis: Article 63(3) of the Treaty establishing the European Community)

Item 17. Council Decision determining the minimum indications to be used on signs at external border crossing points

The Council adopted the above Decision. (Legal basis: Article 62(2)(a) of the Treaty establishing the European Community)

Item 18. Council Decision amending the Common Manual in order to include provision for targeted border controls on accompanied minors

The Council adopted the above Decision. (Legal basis: Regulation (EC) No 790/2001)

4. Statement by the Netherlands

"The Netherlands can agree to the content of the draft Decision. The Netherlands would however call attention to the statements which it made on the adoption of the Regulation concerning the establishment of "Eurodac" for the comparison of fingerprints for the effective application of the Dublin Convention, and on the adoption of the Regulation reserving to the Council implementing powers with regard to certain detailed provisions and practical procedures for carrying out border checks and surveillance, to the effect that the fact of the Council's reserving to itself certain implementing powers may not constitute a precedent for future decisions taken under Part Three, Title IV, of the EC Treaty."
In doing so, the Netherlands would point out that it has joined the Commission in legal proceedings before the Court of Justice of the European Communities in Luxembourg which the Commission has instituted against the Council (Case C-257/01) with a view to the annulment of Council Regulation (EC) No 790/2001 of 24 April 2001 reserving to the Council implementing powers with regard to certain detailed provisions and practical procedures for carrying out border checks and surveillance.

6388/04 FRONT 24 COMIX 105

The Council adopted the above Decision. (Legal basis: Regulation (EC) No 790/2001)

5. Statement by Belgium

"In view of its geographical position, which involves no land borders within the meaning of the Schengen rules, Belgium considers that the concepts of refusal of entry and return ("refoulement") at the external borders constitute one single concept, which is embodied in national legislation by the term "return ("refoulement"). It accordingly declares that, in accepting the standard form annexed to this Decision, it reserves the right to retain the term "return ("refoulement") in the notification to be made to the persons concerned by the measure."

6. Statement by the Netherlands

"The Netherlands can agree to the content of the draft Decision. The Netherlands would however call attention to the statements which it made on the adoption of the Regulation concerning the establishment of "Eurodac" for the comparison of fingerprints for the effective application of the Dublin Convention, and on the adoption of the Regulation reserving to the Council implementing powers with regard to certain detailed provisions and practical procedures for carrying out border checks and surveillance, to the effect that the fact of the Council's reserving to itself certain implementing powers may not constitute a precedent for future decisions taken under Part Three, Title IV, of the EC Treaty.

In doing so, the Netherlands would point out that it has joined the Commission in legal proceedings before the Court of Justice of the European Communities in Luxembourg which the Commission has instituted against the Council (Case C-257/01) with a view to the annulment of Council Regulation (EC) No 790/2001 of 24 April 2001 reserving to the Council implementing powers with regard to certain detailed provisions and practical procedures for carrying out border checks and surveillance."

The Council adopted the above Directive. (Legal basis: Article 62(2)(a) and Article 63(3)(b) of the Treaty establishing the European Community)

7. **Statement by the Council**

"The Council, having taken note of the intention of the Commission to bring forward in the near future a proposal for a common EU approach to the use of passenger data for border and aviation security and other law enforcement purposes, intends to reassess, if necessary, the provisions on data security of this Directive in the framework of its deliberations on the proposal of the Commission."

8. **Statement by the Commission**

"The Commission considers that the draft Council Directive on the obligation of carriers to communicate passenger data must be interpreted in the light of its stated purposes, namely "to combat illegal immigration effectively and to improve border control".

As already announced, the Commission intends to propose by June 2004 a comprehensive legislative measure on data protection and exchanges of information between "law enforcement" authorities. The Commission would have preferred to await that measure before dealing piecemeal with law enforcement issues in this context."
Item 21. Council Decision on the organisation of joint flights for removals, from the territory of two or more Member States, of third-country nationals who are subjects of individual removal orders

6379/04 MIGR 8 COMIX 104 OC 387
+ COR 1
+ COR 2 (it)
+ COR 3 (fr)
+ COR 4 (el)
+ ADD 1

The Council adopted the above Decision. (Legal basis: Article 63(3)(b) of the Treaty establishing the European Community)

Item 22. Council Directive on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted

8043/04 ASILE 23
+ COR 1 (en,fr,it,nl,sv)
+ COR 2 (pt)
+ COR 3 (de)
+ COR 4 (sv)
+ COR 5 (fi)

The Council adopted the above Directive. (Legal basis: Article 63(1)(c), (2)(a) and (3)(a))

9. Statement re Article 4

"The Council states that the present Directive does not prevent Member States from allowing third country nationals or stateless persons found not to qualify for refugee status or subsidiary protection status to remain in their respective territories."

10. Statement re Article 7

"For the purpose of applying Article 7, the Council, considering information from relevant international organisations, will endeavour to provide guidance on the question of whether an international organisation is actually in control of a State or a substantial part of its territory and whether this international organisation provides protection from persecution or suffering of serious harm, based on an assessment of the situation in the State or territory concerned."
Item 36. Council Directive amending Directive 2003/49/EC as regards the possibility for certain Member States to apply transitional periods for the application of a common system of taxation applicable to interest and royalty payments made between associated companies of different Member States
8667/04 FISC 94 OC 425
+ COR 1 (sv)

The Council adopted the above Directive. (Legal basis: Article 94 of the Treaty establishing the European Community)

Item 37. Council Directive amending Directive 2003/96/EC as regards the possibility for Cyprus to apply, in respect of energy products and electricity, temporary exemptions or reductions in the levels of taxation
8242/04 FISC 81 OC 365

The Council adopted the above Directive. (Legal basis: Article 93 of the Treaty establishing the European Community)

Item 38. Council Directive amending Directive 2003/96/EC as regards the possibility for certain Member States to apply, in respect of energy products and electricity, temporary exemptions or reductions in the levels of taxation
8027/04 FISC 75 OC 314

The Council adopted the above Directive. (Legal basis: Article 93 of the Treaty establishing the European Community)

11. Statement by the Council and the Commission

"For the period from 1 May 2004 until 31 December 2004, the Council and the Commission state that, for the Republic of Latvia, the value of the euro in Latvian lat to be applied to the value of the levels of taxation may be the average value of the euro in December 2002."

12. Statement by the Council and the Commission

"The Council and the Commission agree that, in this Directive, exemptions or reductions applicable to energy products and electricity used for district heating do not apply to usage in industrial processes."
On the basis of a proposal from the Commission, the Council undertakes to positively examine, before 1 January 2007, the issue of the level of taxation applicable to energy products and electricity used for district heating. The risk of distortion of competition and the social aspects of district heating, especially in the Acceding States, will have to be taken into account. 

13. **Statement by Latvia**

"The Republic of Latvia reserves the right to further examine the possible consequences of implementation of the new minimum levels of taxation on heavy fuel oil and natural gas with a view to assess the possibility of prolongation of the transitional arrangements provided for in the new directive."

14. **Statement by Malta**

"Malta reserves the right to submit an application in terms of Article 19 of Directive 2003/96/EC in order to obtain authorisation for the prolongation of the transition period relating to the tax exemption on energy products supplied for use as fuel for the purpose of navigation in private pleasure seacraft (yachts, etc.) and private pleasure aircraft. The exemption is granted only on fuel supplied for outbound voyages from Malta."

**Item 39. Council Decision approving a Commission Regulation on the application of Euratom Safeguards**

1. Guidelines \(^1\) will be adopted and published by the Commission as provided in Article 37 of the Regulation. They will provide non-binding orientations and guidance to operators so as to facilitate the application of the Regulation. It is understood that the Guidelines will not create any legal rights or obligations and that the Regulation will remain the binding instrument which will prevail in case of any divergence between the Regulation and the Guidelines.

\(^1\) Reference to doc. containing the final draft of Guidelines.
2. It is understood that by following the Guidelines the operators would ensure that they are in compliance with the provisions of the Regulation addressed by the Guidelines.

3. The Commission will follow the developments in the field of safeguards and monitor the application of the Regulation. On this basis, the Commission may, as appropriate, modify the Guidelines. Prior to the adoption of any modification, the Commission will undertake to consult stakeholders and Member States. In adopting such modifications the Commission will take account of the positions expressed in such consultations.

4. It is understood that the Working Party on Atomic Questions, in a suitable composition, will be the forum for the consultation of Member States."

Item 54. Council Regulations

(a) adapting Regulation (EC) No 685/2001 of the European Parliament and of the Council, in the field of transport, by reason of the accession of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia
   8382/04 TRANS 157 ELARG 63 PECOS 37 OC 383

(b) adapting Regulation (EC) No 2888/2000 of the European Parliament and of the Council, in the field of transport, by reason of the accession of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia
   8381/04 TRANS 156 ELARG 62 OC 382

(c) adapting Regulation (EC) No 2327/2003 of the European Parliament and of the Council, in the field of transport, by reason of the accession of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia
   8380/04 TRANS 155 ELARG 61 OC 381

The Council adopted the above Regulations, with Austria abstaining from the vote as regards the adoption of all three Council Regulations and the United Kingdom abstaining from the vote as regards the adoption of the Council Regulation contained in 8380/04. (Legal basis: Article 2(3) of the Treaty concerning the accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the
Republic of Poland, the Republic of Slovenia and the Slovak Republic to the European Union, and Article 57(1) of the Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded.

Item 56. Council Regulation amending Regulation (EC) No 2100/94 on Community plant variety rights
7614/04 AGRILEG 52 OC 255
+ COR 1 (es)
+ REV 1 (sv)

The Council adopted the above Regulation. (Legal basis: Article 308 of the Treaty establishing the European Community)

16. Statement by the Finnish delegation

"Finland would like to underline that when the requirements for the granting of a compulsory licence are being examined, individual interest should always be included in the public interest. Finland hopes that the Commission will monitor implementation of the Regulation, particularly as regards how the revised compulsory licence practice affects the operation of small plant breeding enterprises."

Item 57. Council Regulations

(a) amending Regulation (EC) No 1782/2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers, and adapting it by reason of the accession of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia to the European Union
7653/1/04 AGRI 77 AGRIFIN 35 AGRIORG 24 ELARG 46 OC 265 REV 1
+ COR 1 (en)
(Legal basis: Article 37(2), 3rd subparagraph, of the Treaty establishing the European Community)
(b) on the common organisation of the market in olive oil and table olives and amending Regulation (EEC) No 827/68
7654/1/04 AGRI 78 AGRIFIN 36 AGRIORG 25 ELARG 47 OC 266 REV 1
(Legal basis: Articles 36 and 37(2), 3rd subparagraph, of the Treaty establishing the European Community)

The Council adopted the above Regulations, with the Spanish delegation abstaining and the Danish and Swedish delegations voting against.

17. Commission statement on the application of Article 42(9) of Regulation (EC) No 1782/2003

"In order to help overcome possible transitional problems in implementing the reform, the Commission will examine whether in the Commission Regulations laying down the implementing rules for the single payment, the date of 29 September 2003 shall be replaced by 15 May 2004."

18. Commission statement concerning the application of Article 46(2) of Regulation (EC) No 1782/2003

"In the first year of application of the single payment scheme, for the purpose of applying Article 46(2) 2nd subparagraph of Regulation (EC) No 1782/2003, the case of a lease, during the reference period, of a holding or part of it, which expires before the date for lodging an application in the first year of application of the single payment scheme, may be considered a case of exceptional circumstances taking into account the fact that the lessee, at the expiry of the lease, has no possibility to transfer his payment entitlements without land, but he has to use them (at least 80% of them), firstly on an equivalent number of hectares.

The eligibility conditions of Article 33 of Regulation (EC) No 1782/2003 and Article 12(5) of Commission implementing Regulation shall of course apply."


"In the context of the implementation of Council Regulation (EC) No 1782/2003, the Commission is prepared to examine the problems that may occur in the Member States, notably the risk of speculative events, and will take where appropriate the necessary measures."
20. **Commission statement for Acceding States producing tobacco**

"As regards tobacco, the Commission is prepared to examine the situation in the new Member States in the light of the transitional measures applied for the old Member States, at the latest at the end of 2005, and with a view to identifying an adequate solution."

**Item 58. Council Decision on a Community financial contribution towards Member States' fisheries control programmes**

8099/04 PECHE 137 OC 328  
+ COR 1 (pt)  
+ COR 2 (fr,it,en)

The Council adopted the above Decision, with the German delegation abstaining.  
(Legal basis: Article 37 of the Treaty establishing the European Community)

21. **Commission statement re Article 4(1)(b)(i)**

"The Commission states that all vessels which were exempted from the obligation to install a satellite tracking device pursuant to Article 3(3) of Regulation No 2847/1993 are entitled to financial aid under Council Decision 2004/XXX on a Community financial contribution towards Member States' fisheries control programmes."

22. **Commission statement re Article 4(1)(h)**

"The Commission states its intention to exclude current Member States from eligibility for Community aid for the purchase and modernisation of vessels and aircraft used for inspection and surveillance of fisheries activities (Article 4(1)(h)), if the scheme is extended beyond 31 December 2005."

23. **Joint statement from Sweden and Germany**

"At the meeting of the internal group on 2 April 2004 it was agreed that an A-item procedure should be initiated concerning the proposal for a Council Decision on a Community financial contribution towards Member States' fisheries control programmes. Although Germany and Sweden accepted this procedure, Germany and Sweden strongly maintain their original position that the Member States are responsible for the monitoring of fisheries activities. As a matter of principle, they should therefore also bear the costs of these monitoring measures."
Item 59. Council Regulation amending Regulation (EC) No 3069/95 establishing a European Community observer scheme applicable to Community fishing vessels operating in the Regulatory Area of the Northwest Atlantic Fisheries Organisation (NAFO)  

8098/04 PECHE 136 OC 327  

The Council adopted the above Regulation. (Legal basis: Article 37 of the Treaty establishing the European Community)  

24. Statement by Portugal  

"Regulation (EC) No 2371/2002 of 20 December 2002 establishes that Member States shall be responsible for placing observers on board fishing vessels.  

At the end of October 2003 the European Commission submitted a proposal for a Regulation amending Regulation (EC) No 3069/95, establishing a Community observer scheme applicable to Community vessels operating in the NAFO area, the objective of which was to transfer that responsibility from the Commission to the Member States.  

It is expected that the proposal for a Regulation will be adopted by the Council only at the end of April 2004, even though the proposal states that it will already be applicable as from 1 May 2004.  

Since the change concerned has budgetary implications, regardless of whether the costs involved fall to Member States or to fishing enterprises, Portugal believes that the Regulation should not enter into force before the beginning of 2005, to allow for the necessary budgeting and for proper coordination between the Commission and the Member States regarding the practical aspects of the transfer of competences. This is advisable because the subject is highly sensitive and has economic and political aspects that should be handled with due care."  


PE-CONS 3637/1/04 AVIATION 68 CODEC 386 OC 227 REV 1  

In accordance with the second indent of Article 251(2), the Council adopted the above Regulation. (Legal basis: Article 80(2) of the Treaty establishing the European Community)
Item 69. Council Regulation amending Regulation (EC) No 2287/2003 fixing for 2004 the fishing opportunities and associated conditions for certain fish stocks and groups of fish stocks, applicable in Community waters and, for Community vessels, in waters where limitations in catch are required

8072/04 PECHE 134 OC 330 + COR 1

The Council adopted the above Regulation. (Legal basis: Article 24(3) and Annex XII to the Act of Accession of 2003, and Article 20 of Regulation (EC) No 2371/2002)

25. Statement by the Swedish delegation

"In view of the Commission Proposal on an increase of the TAC for 2004 of the eastern cod stock in the Baltic Sea, Sweden would like to communicate that Sweden still considers the stock situation to be very uncertain, a fact that is also recognised by ICES, and that a precautionary line of action should be taken. New scientific advice for next year will be available in May, and it would therefore have been preferable to await this advice and to follow the development of the cod stock in the Baltic Sea before taking further action."

26. Statement by the United Kingdom delegation on Greenland cod

"The United Kingdom recalls its statement for the minutes of the December Agriculture and Fisheries Council in which the omission of a quota for Greenland cod from the Regulation setting TACs and quotas for 2004 was deeply regretted. That statement made it clear that this omission effectively prejudged whether the Council would adopt the draft Regulation giving effect to the content of the Protocol modifying the Fourth Protocol between the Community and Greenland. The UK therefore regrets all the more that this Regulation amending the quota arrangements for 2004 does not rectify the situation by reinstating the Greenland cod quota."

27. Joint statement by the French and United Kingdom delegations on herring flexibility

"The provision by which Denmark, Germany and Sweden are offered the flexibility to fish up to 50% of their 2004 Skagerrak and Kattegat herring quotas in an area of the North Sea, an adjacent management area, is contrary to the principle of relative stability as it has been interpreted by the judgement of ECJ delivered on 18 April 2002 in "Spain v. Council". As such the French, Netherlands and United Kingdom delegations assert that footnote (3) to the
HER 03/A quota in the first amendment to Annex IB of Council Regulation (EC) No 2287/2003 is contrary to the consistent implementation of the Common Fisheries Policy. Further, the provision is made in advance of an ICES opinion on the basis of an undemonstrated biological concern. In that respect, it is premature."

28. Statement by the Commission

"The Commission notes that the flexibility arrangements concerning the fishing of part of the Community quotas of herring in the Skagerrak and the Kattegat in the North Sea are ad hoc arrangements for 2004 only. The Commission has no intention of proposing similar arrangements in the future."