COUNCIL OF THE EUROPEAN UNION

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LIMITE

PV/CONS 31
JAI 63

DRAFT MINUTES

Subject: 2266th meeting of the Justice and Home Affairs Council held in Brussels on 29 May 2000

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.
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1. Adoption of the agenda
   8786/00 OJ/CONS 27 JAI 57

   The Council adopted the agenda as set out in 8786/00 OJ/CONS 27 JAI 57, adding the following items:

   9. State of play of implementation of the Tampere conclusions
      (g) Scoreboard

   18. Interception of telecommunications outside of legal framework.

2. Approval of the list of "A" items
   8787/00 PTS A 27

   The Council approved the "A" items listed in 8787/00 PTS A 27.

   Item 4 should read as follows:

   Council Regulation on insolvency proceedings (LA+S) 1
   8561/00 JUSTCIV 57
   5630/00 JUSTVIC 8 MI 6
   + COR 1 (it)
   + COR 2
   + COR 3
   + REV 1 (fi)

   Information on items 1, 3, 4, 5 and 9 is set out in Annex I to these minutes.

   The Spanish and United Kingdom delegations underlined the importance of the agreed arrangements in respect of Gibraltar, which had made it possible to adopt several instruments that had been blocked until then.

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1 (LA+S) = Legislative act + statement(s)
The Danish delegation noted that several instruments had been adopted on the basis of Title IV TEC, in which Denmark did not participate. In order for Denmark to be involved in the application of the relevant rules, the Danish delegation called for parallel agreements to be signed with Denmark. As a first step leading to such parallel agreements, the Commission should receive a mandate to start negotiations with Denmark as soon as possible.

3. **Proposal for a Council Decision creating a European Refugee Fund**

8678/00 ASILE 25 FIN 177

The Council held an in-depth exchange of views on the three questions set out in points 8 to 10 of 8678/00.

With regard to Article 1a, which was acceptable to most delegations:

- the German delegation upheld its reservation;
- the Spanish delegation considered that the percentage of the Fund earmarked for emergency measures should be increased.

With regard to Article 5, most of the delegations and the Commission endorsed the compromise text suggested by the Presidency, which reads as follows:

"Article 5

Emergency measures

1. Without prejudice to measures to be adopted by the Council on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof, the Fund may also … (rest unchanged)."
The Spanish and French delegations wanted the decision to be taken by the Council pursuant to paragraph 1 to be adopted unanimously. The German delegation stood by its position in favour of deleting Article 5. The Commission representative stressed the need to keep Article 5, without which there would be no legal basis for implementing the amounts provided for in the proposal for a Decision. The Greek delegation, for its part, was of the view that if the Article were to be maintained, more consideration should be given to the legal basis, in particular with regard to the last section of paragraph 1.

With regard to Article 9, lastly, the Council discerned a degree of rapprochement in the delegations' positions, in particular on the basis of the following text, submitted by way of a compromise by the Netherlands delegation:

"Article 9
Allocation of resources

1. For the years 2001 to 2003 each Member State shall receive the following fixed amount of the European Refugee Fund’s annual allocation:

For the year 2001: € 500 000;
For the year 2002: € 300 000;
For the year 2003: € 100 000.

2. The remainder of the available resources shall be distributed proportionally between the Member States as follows:

(a) 65% in proportion to the number of persons referred to in Article 2, points 3 and 5 who have entered over the previous three years;

(b) 35% in proportion to the number of persons admitted in one of the categories in Article 2, points 1, 2 and 4 over the previous three years.

3. The reference figures in paragraph 2 shall be the most recent figures established by the Statistical Office of the European Communities."
Nevertheless,

– some delegations would prefer the amount to be distributed between the Member States to take into account the number of refugees admitted as a percentage of the total population of the Member State in question; the Austrian delegation, which favoured such an approach, nevertheless suggested that this method of distribution be retained as a supplementary criterion, thus providing for three levels of distribution of the Fund in Article 9;

– other delegations were unable to state their final position and entered reservations.

The Commission representative, while expressing sympathy for the position of those delegations which were in favour of introducing a criterion based on the ratio of the number of refugees admitted to the total population of the host Member State, nevertheless warned of the potential distortions such a criterion could cause.

Noting the Commission representative's information as to the urgent need to achieve a global solution to the matter so as to be able to implement the budgetary amounts already earmarked for 2000, the Council instructed the Permanent Representatives Committee to press ahead with the search for a solution to the problems outstanding problems so that the Council could adopt the decision at the earliest opportunity.

4. Negotiating directives for Community readmission agreements

The Council examined the issues outstanding as regards the draft Council Decision authorising the Commission to negotiate a readmission agreement between the Community and Morocco and agreed to instruct the Permanent Representatives Committee to pursue its examination of the issues in order to enable the Council to reach an agreement on the Decision as soon as possible, as well as on the draft Decisions concerning the negotiation of readmission agreements with Pakistan, Sri Lanka and Russia.

The Council took note of the information supplied by the Presidency with regard to the state of play on the proposal for a Directive on family reunification and held a brief exchange of views on some of the key issues set out in 7675/1/00 REV 1. Noting that there were profound differences of opinion on several of those issues, the Council instructed the Permanent Representatives Committee to continue its examination of the proposal with a view to attaining a balanced yet ambitious solution. Highlighting the importance of this question as a cornerstone of Community integration policy, the Presidency called on the delegations to display flexibility in their quest for solutions to the various issues arising.


The Council noted the Commission's presentation of its proposal for a Directive on temporary protection. The French delegation outlined the main points of the note it had drafted on temporary protection (cf. 8510/00). Following a brief exchange of views which gave the delegations the opportunity to highlight certain points which either gave rise to doubts (principle of double voluntary action (Germany), suspension of asylum proceedings (Germany, which considered that suspension should be mandatory), when to grant access to the labour market (Italy)) or met with support (access to the procedure for determining refugee status in accordance with the Geneva Convention (Sweden), minimum yet ambitious standards (Sweden), cooperation with the UNHCR (Sweden)), the Council instructed the relevant bodies to resume examination of the Commission proposal forthwith.

7. High Level Working Group on Asylum and Migration: activity report

The Council noted the information supplied by the Presidency regarding the activities of the High Level Working Group on Asylum and Migration.
8. Terrorism – Threat assessment

The Council took note of the document assessing the internal and external threat posed by terrorism and terrorist organisations.

9. State of play of implementation of the Tampere European Council conclusions

The Council acknowledged the Presidency's report on the state of play of implementation of the Tampere European Council conclusions concerning the following points:

(a) Mutual recognition

The Presidency took stock of work in preparation for the programme to be adopted in December 2000 and the preparation of an instrument on the freezing of assets. The United Kingdom delegation wished to see the work speed up. The French delegation pointed out that the general issue of mutual recognition would be on the agenda for the informal meeting of Ministers in Marseilles at the end of July.

(b) Eurojust

For the implementation of Tampere conclusion No 46, in which the Heads of State and Government call on the Council to adopt a legal instrument creating the abovementioned institution before the end of 2001, the Presidency had taken the initiative of closely involving the three Member States which will hold the Presidency between now and then, namely France, Sweden and Belgium.

On the basis of the interesting policy debate conducted by the Ministers for Justice and Home Affairs at their informal meeting in Lisbon in March 2000, the four Member States had drafted a policy document on the main issues: competence, missions, relations with other bodies (Europol, OLAF, European Judicial Network) and administrative matters.
The document had on the whole been positively received by the delegations and the Commission in the Article 36 Committee's two discussions on the matter.

Encouraged by the debate, the four Member States have prepared drafts of the act which will be officially submitted shortly.

The German delegation said that the Federal Republic of Germany had officially submitted to the Council a draft decision on the establishment of Eurojust.

The Presidency concluded from the debate that it would be for the French Presidency to find the best way of linking the two initiatives with a view to establishing Eurojust within the deadlines set by the European Council.

(c) European Police College

The Presidency said that, as was the case for Eurojust, good ground had been made on this issue. On the basis of the report from the Council General Secretariat discussed at the informal meeting of the Ministers in Lisbon, the Article 36 Committee and the Police Cooperation Working Party had sketched out the broad lines of the European Police College.

Portugal could officially send a draft legal act to the Council in the very near future, allowing the Council – after consulting the European Parliament – to adopt the act at its meeting in December. The French delegation made clear that this project would be one of its Presidency's priorities and informed the Council of various training seminars to be held in the second half of the year as a preliminary to the European Police College.

The Austrian delegation wanted reflection on the second phase of the European Police College to commence as of now.
(d) **External relations**

The Presidency recalled that at Tampere, the European Council had asked the Council to draw up "specific recommendations … in close co-operation with the Commission on policy objectives and measures for the Union’s external action in Justice and Home Affairs, including questions of working structure, prior to the European Council in June 2000.".

The Presidency announced that, in close co-operation with the Commission and with the support of all delegations, it had drawn up a draft report which ought, after examination by the General Affairs Council on 13 June, be sent to the European Council in Feira for approval.

(e) **Task Force of European Chiefs of Police**

The Presidency reported on the first meeting of chiefs of police held in Lisbon on 7 and 8 April 2000.

The United Kingdom delegation stressed the importance it attached to the initiative and the need for the Task Force to adopt the most operational approach possible when dealing with security.

(f) **Crime prevention**

The Presidency recalled the great store the Heads of State and Government set by prevention, as evidenced by the Tampere conclusions. It said that a series of original proposals had been made at the beginning of May at the High Level Conference it had organised in the Algarve.
The Council instructed the Article 36 Committee to initiate a reflection on the best ways of putting into practice the Tampere recommendations on crime prevention, drawing on ideas floated at the Praia da Falésia Conference and any other contributions the delegations might care to make. The French delegation announced that two seminars would be held under its Presidency, one on juvenile delinquency and the other on urban violence. The Commission representative announced that the Commission would be presenting a communication on crime prevention in the autumn.

(g) **Scoreboard**

The Commission representative distributed to the Council a consolidated version of the scoreboard, which had been presented for the first time in its provisional version at the informal meeting of the Justice and Home Affairs Ministers on 2 and 3 March 2000. The next edition of the report, which would be updated twice a year, would be available in the course of the French Presidency.

**10. Draft Council Decision to combat child pornography on the Internet**

8718/00 CRIMORG 84

The Council adopted the draft Decision to combat child pornography on the Internet as set out in 8718/00 CRIMORG 84.

The Council also made the statement set out in Annex I to these minutes.

**11. Provision of information to national parliaments in the JHA field**

8885/00 CATS 42
8163/1/00 CATS 31 REV 1

The Council debated this issue over lunch. The Presidency concluded that the Permanent Representatives Committee would look into a horizontal approach to the questions of document distribution and translation.

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12. **Draft Convention on mutual legal assistance in criminal matters between the Member States of the European Union**

   8729/00 COPEN 39 COMIX 414
   7846/1/00 COPEN 32 COMIX 342 REV 1
   + COR 1 (fi)
   + COR 2 (sv)
   + COR 3 (it)
   + COR 4 (fr)

   The Council:

   – adopted the act establishing the Convention on mutual legal assistance in criminal matters between the Member states of the European Union as set out in 7846/1/00 COPEN 32 COMIX 342 REV 1 + COR 1 (fi) + COR 2 (sv) + COR 3 (it) + COR 4 (fr);

   – decided to enter in these minutes the statements attached hereto (Annex I).

13. **Draft Council Decision concerning arrangements for cooperation between financial intelligence units of the Member States in respect of exchanging information**

   8414/1/00 CRIMORG 70 REV 1

   The Council marked its political agreement on the draft Decision concerning arrangements for cooperation between financial intelligence units of the Member States in respect of exchanging information, subject to one question outstanding relating to its territorial scope and parliamentary scrutiny reservations by the United Kingdom and Sweden. The Council instructed the Permanent Representatives Committee to finalise the text as soon as possible so that the Decision could be formally adopted under the French Presidency. The outcome of the proceedings is contained in 8414/2/00 CRIMORG 70 REV 2 and COR 1.

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1 The Convention was signed by the Ministers for Justice, in the margins of the Council meeting, just after the meeting of the Mixed Committee.
14. **Draft framework Decision on combating fraud and counterfeiting of non-cash payments**  
   8727/00 DROIPEN 20 CRIMORG 85 ECO 144

   The text set out in 8727/00 DROIPEN 20 CRIMORG 85 ECO 144 was agreed subject to:

   – the examination of the Opinion of the European Parliament in due course;

   – the reservation upheld by the Commission on Article 2 set out under point II(b) of DROIPEN 20. The President invited the Commission to reflect further on this issue;

   – parliamentary scrutiny reservations by the Danish, Netherlands, Swedish and United Kingdom delegations on the draft.

15. **Draft framework Decision on the standing of the victims in criminal procedure**  
   8728/00 COPEN 38

   The Council heard a presentation by the Presidency on progress with the draft Framework Decision on the standing of victims in criminal procedure submitted to it by Portugal.

16. **Alternative methods of settling disputes in transborder conflicts**  
   8719/00 JUSTCIV 63

   The Council endorsed the conclusions set out in 8719/00 JUSTCIV 63 concerning alternative methods of settling disputes, on the understanding that they only related to matters under civil or commercial law.
17. European Judicial Network: presentation and recent developments: the judicial atlas

The Council was informed about the latest developments concerning the European Judicial Network (EJN). It was given a demonstration of the European Judicial Atlas, a computer program that easily identifies the judicial authority which is competent for receiving requests for mutual legal assistance. The Atlas is being developed by representatives of the Portuguese and Belgian governments, with financial support from the Grotius programme. When finished, it will be made available to the judicial authorities in the Member States.

18. Interception of telecommunications outside any legal framework

The Council endorsed the conclusions set out in Annex II concerning the interception of telecommunications outside any legal framework.

19. Other business

No other items were raised.

In the margins of the Council meeting: Mixed Committee at ministerial level

The minutes of the Mixed Committee are contained in 9377/00 JAI 68 COMIX 478.
Re item 12

STATEMENTS ON THE OCCASION OF THE ADOPTION OF THE ACT ESTABLISHING THE CONVENTION ON MUTUAL ASSISTANCE IN CRIMINAL MATTERS BETWEEN THE MEMBER STATES OF THE EUROPEAN UNION

1. Statement by Germany on the data protection clause (Article 23)

"In connection with the provisions on data protection which have now been incorporated into the Convention, the question has arisen of the extent to which data collected by the legal authorities in one Union Member State may be used by the police services in another Member State for preventing serious risks and combating serious crime in the future. In the time available the Convention has been able to provide only a partial answer. However, in the light of the Tampere conclusions, this is a question of considerable importance, which in Germany’s view needs to be discussed in detail. Germany therefore reserves the right to follow up its request to that effect and in due course to submit an initiative on the subject within the EU in the appropriate framework."

2. Statement on preparation for implementation of the Convention

"With a view to an effective implementation of the Convention on mutual assistance in criminal matters between the Member States of the European Union, the Member States shall, within a year after the adoption of the act establishing the Convention, consult each other within the Council on all practical and technical aspects related to the application of the Convention, in particular the provisions of Title III. The obligations contained in Articles 4 and 5 of Directive 97/66/EC of the European Parliament and of the Council of 15 December 1997 concerning the processing of personal data and the protection of privacy in the telecommunications sector shall be taken into account. The Commission shall be fully associated."

3. Declaration by the Council

"The provisions on the territorial application of the present Convention are without prejudice to the application of the Convention to the territories of Member States other than the United Kingdom. Consequently, they do not affect the right of Member States to extend the application of the Convention to their Overseas Countries and Territories."
Re item 18

INTERCEPTION OF TELECOMMUNICATIONS – COUNCIL CONCLUSIONS


The Council reaffirms its attachment to respect for the fundamental principles relating to the protection of human rights and personal freedoms, both for natural and legal persons, as recognised by the Treaty on European Union.

If telecommunications interception can be an important tool in combating crime or for the defence of national security, in no case can it be used for the objectives of gaining commercial advantage.

The Council has noted that the Commission intends shortly to bring forward appropriate measures for achieving a more secure information society.

The Council asks the Presidency to see to it that the relevant Council working parties ensure respect for the above principles and that they encourage, in particular, any preventive measure which may protect against the abuse of new technologies."