

EUROPEAN PARLIAMENT



Directorate General for Research

WORKING PAPERS

THE THIRD PILLAR OF THE TREATY ON EUROPEAN UNION

CO-OPERATION IN THE FIELDS OF JUSTICE AND HOME AFFAIRS

Pages 315-373 have been deleted from this document. The contents are available on AEI under the title Acts Adopted under Title VI of the Treaty on European Union, <http://aei.pitt.edu/1739>.

People's Europe Series

W-8

3282 EN

DA

DE

EL

ES

FR

IT

NL

PT

FI

SV

This publication is available in all the official languages of the European Union.

EN (ORIGINAL)

This study was drawn up for the European Parliament by Ms. Anne KEANE, M.A. European Integration Studies, University of Limerick. The author accepts sole responsibility for the views expressed in the study, which do not necessarily reflect the European Parliament's position.

Reproduction and translation for non-commercial purposes are authorized provided the source is acknowledged and the publisher is given prior notice and sent a copy.

PUBLISHER: EUROPEAN PARLIAMENT
DIRECTORATE GENERAL FOR RESEARCH
DIVISION FOR BUDGETARY AFFAIRS, CIVIL LIBERTIES AND
INTERNAL AFFAIRS, RULES OF PROCEDURE, PETITIONS AND
COMPARATIVE LAW
L-2929 LUXEMBURG
B-1047 BRUSSELS

Tel. +32.2.284.36.84 (Brussels)
Fax +32.2.284.49.55 (Brussels)

EDITOR: Andrea SUBHAN

Manuscript completed in December 1996

EUROPEAN PARLIAMENT



Directorate General for Research

WORKING PAPERS

**THE THIRD PILLAR OF THE TREATY ON
EUROPEAN UNION**

CO-OPERATION IN THE FIELDS OF JUSTICE AND HOME AFFAIRS

People's Europe Series

W-8
12-1996

Table of Contents

Instruments adopted in the field of Justice and Home Affairs	i
Introduction	1
1. Development of Intergovernmental Co-operation on Internal Affairs	5
1.1 Intergovernmental Working Groups	7
1.2 TREVI	9
1.2.1 Structure of TREVI	10
1.3 K.4 Committee	11
1.4 Results achieved under Title VI	12
1.5 Inadequacies of the legal instruments	13
1.6 Changes introduced by the Maastricht Treaty	13
2. The Structure of Title VI	15
2.1 Matters of common interest	15
2.2 Compliance with international conventions	16
2.3 Right of initiative	16
2.4 Legal Instruments	17
2.5 Co-ordinating Committee	17
2.6 Common positions	17
2.7 Role of the European Parliament	18
2.8 Bilateral/Multilateral Agreements	18
2.9 Application of certain provisions in First Pillar to Third Pillar	18
2.10 Budget	18
2.11 Passerelle Provision	19
2.12 The Maastricht Treaty's innovations	19
2.13 Decision-making requirements of the Third Pillar	20
2.14 Legal nature of Third Pillar	21
2.15 Application of K.9	22
2.16 Commission perspective on the application of Article K.9	23
2.17 European Parliament's position on the application of Article K.9	24

3.	Free movement of Persons within the European Union	25
3.1	Background to the Commission's Proposals	27
3.2	Commission proposal on the right of third country nationals to travel within the EU	28
3.2.1	EP position on the proposal for the right of third country nationals to travel within the EU	30
3.3	Proposal for a Council Directive on the elimination of controls on persons crossing internal frontiers	31
3.3.1	EP position the proposal for a Council Directive on the elimination of controls on persons crossing internal frontiers	32
3.4	Council Proposal to amend Directives 68/360/EEC & 73/148/EEC	33
3.4.1	EP position on the Council Proposal to amend Directives 68/360/EEC and 73/148/EEC	34
3.5	External Frontiers Convention	34
3.6	Overview of the contents of the External Frontiers Convention	35
4.	The Schengen Agreement	38
4.1	Principal aim of the Convention	40
4.2	Structure of the Convention	41
4.3	Accompanying Measures	41
4.4	Movement in the Schengen Area	42
4.5	Asylum	42
4.6	Police and Legal Co-operation	43
4.7	Schengen Information System	43
4.8	The Executive Committee	45
4.9	European Parliament's Resolution on Nordic Passport Union	46
5.	Police Co-operation	47
5.1	Background to Europol	47
5.2	Objectives of Europol	48
5.3	Tasks of Europol	49
5.4	Europol Drugs Unit	49

5.5	Exchange of Information	50
5.6	Trends observed in 1994 and 1995	51
5.7	European Parliament's Resolution on Europol	52
6.	Asylum and Immigration	54
6.1	Restrictive Measures	56
6.2	Asylum and Immigration as matters of common interest	56
6.3	Convention determining the State responsible for examining applications for asylum lodged in one Member State - The Dublin Convention	57
6.4	Communication from the Commission to the Council and European Parliament on Immigration and Asylum policies	58
6.5	EP's report on the Communication from the Commission to the Council and EP on Immigration and Asylum policies	59
6.6	External policy	60
6.7	EP Resolution on harmonisation within the European Community of asylum law and policies	61
6.8	EP Resolution on a European immigration policy	62
6.9	Visa Regulations	63
6.10	CIREA and CIREFI : <i>Centre d'Information de Réflexion et d'Échange en matière d'Asile</i> and Centre for Information, Discussion and Exchange on the crossing of Frontiers and Immigration	64
6.11	European Parliament's Resolution on CIREFI	65
6.12	Definition of the term 'Refugee'	66
6.13	EP position on minimum guarantees	67
7.	Extradition and Terrorism	70
7.1	Extradition Conventions	70
7.1.1	Convention on extradition between Member States of the EU	72
7.2	Terrorism	73
7.3	Directory of powers in the anti-terrorist struggle	74

8. Legal co-operation: Criminal and Civil Matters	75
8.1 Criminal Matters	75
8.1.1 Mutual Judicial Assistance	75
8.1.2 Protection of the European Communities' financial Interests	75
8.1.3 Trafficking in women and the sexual exploitation of children	78
8.2 Action to combat Racism and Xenophobia	79
8.3 Civil matters	80
8.3.1 Extension of the Brussels Convention	80
8.3.2 Draft Convention on the services of judicial documents	81
9. The Third Pillar: Still Early Days?	82

List of Tables

Table 1	Working Structures in the fields of Justice and Home Affairs	4
Table 2	Structures of Intergovernmental Co-operation in the fields of Justice and Home Affairs	14
Table 3	Schengen Members	40

List of Graphs

Graph 1	Europol: Number of outgoing requests per Member State	51
Graph 2	Europol: Number of Incoming Requests per Member States	52

Annexes

Listed according to Chapter

Chapter 2

1. Title VI of the Treaty on European Union, Co-operation in the fields of Justice and Home Affairs.

Chapter 3

2. European Parliament Resolution on a Proposal for a Council directive concerning the right of third country nationals to travel within the Community (COM (95) 346 final).
3. European Parliament Resolution on a Proposal for a Council directive concerning the abolition of controls on persons at internal frontiers (COM (95) 347 final).
4. European Parliament Resolution on a Proposal for a European parliament and Council Directive amending Directive 68/360/EEC on the abolition of restrictions on movement and residence within the Community for workers of Member States and their families and Directive 73/148/EEC on the abolition of restrictions on movement and residence within the Community for nationals of Member States with regard to establish and the provision of services (COM (95) 348 final).

Chapter 4

5. European Parliament Resolution of 20 June 1995 on free movement of persons within the Nordic Passport Union, the European Economic Area and the Schengen countries.

Chapter 5

6. Council Act drawing up the Convention on the establishing a European Police Office.
7. Protocol on the interpretation, by way of preliminary rulings by the European Court of Justice of the European communities of the Convention on the establishment of a European Police Office.
8. European Parliament Resolution on EUROPOL.
9. European Parliament Resolution on EUROPOL.

Chapter 6

10. Convention determining the State responsible for examining applications for asylum lodged in one Member State - The Dublin Convention.
11. European Parliament Resolution on the harmonisation within the European Community of asylum law and policies (A3-0337/92) OJ 21.12.1992.
12. European Parliament Resolution on European immigration and asylum policy (A3-0280/92) of 18 November 1992, OJ C 337 21.12.1992.
13. Council regulation (EC) No. 1683/95 of 29 May 1995 laying down a uniform format for visas, OJ L 164 of 14.07.1995.
14. Council Regulation (EC) No. 2317/95 of 25 September 1995 determining the third countries whose nationals must be in possession of visas when crossing the external borders of Member States, OJ L 234 3.10.1995.
15. European Parliament's Resolution on the Centre for Information, Discussion and Exchange on the Crossing of Frontiers and Immigration (CIREFI).
16. Definition of the term 'Refugee' in Article 1 of the Geneva Convention.
17. European Parliament's position on minimum guarantees.

Chapter 7

18. Council Act of 10 March 1995 drawing up the Convention on simplified extradition procedures.
19. Council Act of 27 September 1996 drawing up the Convention relating to extradition between the Member States of the European Union.
20. La Gomera Declaration.

Chapter 8

21. Joint action adopted by the Council on the basis of Article K.3 of the Treaty of the European Union concerning a framework for the exchange of liaison magistrates to improve judicial co-operation between the Member States.

22. EP Resolution of 9 September 1996 on the European Commission's Work Programme on the fight against fraud for 1996.
23. Convention pursuant to Article K.3 of the Treaty on European Union on the protection of the European Communities' financial interests.
24. Council Regulation of 18 December 1995 on the protection of the European Communities' financial interests.
25. EP Resolution on a Draft second protocol drawn up on the basis of Article K.3 of the Treaty on European Union to supplement the Convention on the Protection of the European Communities' financial interests (officials and members).
26. EP Resolution on a Proposal for a Council Regulation (EC, Euratom) on on-the-spot checks and examination by the Commission to protect the financial interests of the European Communities against fraud and other irregularities.
27. Resolution on exploitation of children.
28. European Parliament adopted a Resolution on racism, xenophobia and anti-Semitism on 26 October 1995.

Supplementary Annexes

29. EP Resolution of 20 January 1996 on Participation by Parliament in international agreements in the fields of Justice and Home Affairs.
30. EP Resolution of 14 December 1996 on the progress made in 1995 in the implementation of co-operation in the fields of Justice and Home Affairs pursuant to Title VI of the Treaty on European Union.
31. EP Resolution of 15 June 1996 on the communication from the Commission to the Council and the European Parliament on a European Union action plan to combat drugs (1995 to 1999) (COM (94) 0234-C4-0107/94).
32. EP Resolution of 18 January 1996 on trafficking in human beings.

Council Decision of 23 November 1995 on publication in the Official Journal of the European Communities of acts adopted by the Council under Title VI of the Treaty on European Union as published in OJ C 274, 19.09.1996. The following annexes appear in this Official Journal.

33. Council Decision of 23 November 1995 on publication in the Official Journal of the European Communities of acts adopted by the Council in the field of asylum and immigration.
34. Council resolution of 20 June 1994 on limitations of third country nationals to the territory of the Member States for employment.
35. Council resolution of 20 June 1994 on limitations of third country nationals to the territory of the Member States for the purposes of pursuing activities of self-employed persons.
36. Council resolution of 20 June 1994 on limitations of third country nationals to the territory of the Member States for study purposes.
37. Council resolution of 20 June 1995 on minimum guarantees for asylum procedures.
38. Council recommendation of 30 November 1994 concerning the adoption of a standard travel document for the expulsion of third country nationals.
39. Council recommendation of 30 November 1994 concerning a specimen bilateral readmission agreement between a Member State and a third country.
40. Council recommendation of 24 July 1995 on the guiding principles to be followed in drawing up protocols on the implementation of readmission agreements.
41. Council conclusions of 20 June 1994 concerning the possible application of Article K.9 of the Treaty on European Union to asylum policy.
42. Means of proof in the framework of the Dublin Convention.
43. Form of a laissez-passer for the transfer of an asylum applicant from one Member State to another.
44. Circulation and confidentiality of joint reports on the situation in certain third countries.
45. Standard form for determining the State responsible for examining an application for asylum policies.
46. Council conclusions of 20 June 1994 on the Commission communication on immigration and asylum policies.

47. Council conclusions of 30 November 1994 on the organisation and development of the Centre for Information, Discussion and Exchange on the Crossing of Frontiers and Immigration (Cirefi).
 48. Guidelines for joint reports on third countries.
 49. Second activity report on the Centre for Information, Discussion and Exchange on Asylum (Cirea).
 50. Honorary consuls already empowered to issue visas who as a traditional measure will be allowed to issue uniform visas.
-
51. Council Resolution of 14 October 1996 laying down priorities for co-operation in the field of justice and home affairs for the period from 1 July 1996 to 30 June 1998. (OJ C 319, 26.10.1996)
 52. Council Resolution of 17 January 1995 on the lawful interception of telecommunications.
(OJ 329, 4.11.1996)
 53. Joint action of 28 October 1996 adopted by the Council on the basis of Article K.3 of the Treaty on European Union, on a programme of incentives and exchanges for legal practitioners (Grotius).
(OJ L287, 8.11.1996)
 54. Joint action of 28 October 1996 adopted by the Council on the basis of Article K.3 of the TEU introducing a programme of training, exchanges and co-operation in the field of identity documents (Sherlock). (OJ L287, 8.11.1996)

Instruments adopted in the fields of Justice and Home Affairs¹

1. European Council

Joint Actions

Subject	Adoption	Publication
Decision 94/795/JHA on a joint action adopted by the Council on the basis of Article K.3(2)(b) of the Treaty on European Union concerning travel facilities for school pupils from third countries resident in a Member State	30.11.94	OJ L 327, 19.12.1994
Council Joint Action 95/73/JHA concerning the Europol Drugs Unit on the basis of Article K.3(2)(b) of the TEU	10.03.95	OJ L 62, 20.03.1995
Council Joint Action 96/197/JHA on airport transit arrangements	04.03.96	OJ L 63, 13.3.1996
Council Joint Action on the exchange of liaison magistrates	22.04.96	OJ L 105, 24. 7.1996
Council Joint Action concerning action to combat racism and xenophobia	15.07.96	OJ L 185, 24.7.1996
Joint Action on exchanges for legal practitioners (Grotius)	28.10.96	OJ L 287, 8.11.96
Joint Action on training and exchanges in the field of identity documents	28.10.96	OJ L 287, 8.11.96
Joint Action concerning the creation and maintenance of a Directory of specialised counter-terrorist competence	15.10.96	OJ L 273, 25.10.96
Joint Action providing for a Community framework for the initiatives of the Member states concerning liaison officers	14.10.96	OJ L 268, 19.10.96
Joint Action concerning the creation of a directory of competence and expertise in the fight against international organised crime	29.11.96	Presse 346-G

Joint Positions

Subject	Adoption	Publication
Joint Position 96/196/JHA concerning harmonised application of the definition of the term 'refugee' in Article 1 of the Geneva Convention of 28 July 1951 relating to the Status of refugees. adopted on the basis of article K.3 of the Treaty on European Union	4.03.1996	OJ L 63, 13.03.1996
Joint Position on pre-frontier assistance and training assignments	25.10.96	OJ L 281, 31.10.96

¹ This list is not exhaustive.

Conventions²

Subject	Signed	Publication
Convention on simplified extradition procedure between the Member States of the European Union	10.03.1995	OJ C 78, 30.03.1995
Council Act establishing the Europol Convention	26.07.1995	OJ C 316, 27.11.95
Council Act establishing the Convention on the Protection of the Communities' Financial Interests	26.07.1995	OJ C 316, 27.11.95
Council Act drawing up a Protocol to the Convention on the Protection of the Communities' Financial Interests	27.09.1996	OJ C 313, 23.10.96
Council Act establishing the Convention on the customs information system (CIS)	26.07.1995	OJ C 316, 27.11.95
Council Act drawing up the Convention relating to extradition between the Member States of the Union	27.09.1996	OJ C 313, 23.10.96
Schengen Agreement	14.06.1985	
Schengen Implementing Convention	19.06.1990	
Dublin Convention determining the State responsible for processing an asylum application	15.06.1990	

² These are Conventions which have been signed by the Member States but not necessarily ratified.

Regulations

Subject	Adoption	Publication
Council Regulation (EC) No. 1683/95 laying down a uniform format for Visas	29.05.1996	OJ L 164, 14.07.1995
Council Regulation (EC) No. 2317/95 determining the third countries whose nationals must be in possession of Visas when crossing the external borders of a Member State	25/26.09.1995	OJ L 234, 3.10.1995

Resolutions

Subject	Adoption	Publication
Council Resolution on the interception of telecommunications	29/30.11.1993	Press release 1055/93 (Presse 209)
Resolution on Fraud on an international scale- protection of the financial interests of the Community	29/30.11.1993	Press release 1055/93 (Presse 209)
Council Resolution on limitations on admission of third-country nationals to the Member States for employment	20.06.1994	OJ C 274, 19.09.96
Council Resolution relating to the limitations on the admission of third-country nationals to the Member States for the purposes of pursuing activities as self-employed persons	30.11.1994	OJ C 274, 19.09.96
Council Resolution on the legal protection of the financial interests of the Communities	6.12.1994	OJ C 355, 14.12.1994
Council Resolution on the admission of third country nationals to the territory of the Member States of the EU for study purposes	30.11.1994	OJ C 274, 19.09.96
Council Resolution on minimum guarantees for asylum procedures	20.06.1995	OJ C 274, 19.09.96
Council Resolution on burden-sharing with regard to the admission and residence of displaced persons on a temporary basis	25/26.09.1995	OJ C 262, 7.10.1995
Council Resolution on the protection of witnesses in the fight against international organised crime	23.11.1995	OJ C 327, 7.12.1995
Council Resolution on the status of third country nationals residing long term in the Member States	4.03.1996	OJ C 80, 18.03.1996
Council Resolution on the lawful interception of telecommunications	17.01.1996	OJ C 329, 4.11.1996
Council Resolution laying down the priorities for co-operation in the fields of JHA for the period from 1 July 1996 to 30 June 1998	14.10.1996	OJ C 319, 26.10.1996
Council Resolution on measures against drug tourism	29.11.1996	Presse 346-G

Recommendations

Subject	Adoption	Publication
Council Recommendation on the fight against money laundering	29/30. 11.1993	Press release 1055/93 (Presse 209)
Council Recommendation on organisers responsibility for sporting events	29/30. 11.1993	Press release 1055/93 (Presse 209)
Council Recommendation on the organisation of a training module on the operational analysis of crime	6.5.1994	Press release 1055/93 (Presse 209)
Council Recommendation for the exchange of information on the occasion of major events or meetings	30.11/1.12.1994	Press release 11321/94 (Presse 252-G)
Council Recommendation concerning the adoption of a standard travel document for the expulsion of third country nationals	30.11/1.12.1994	Press release 11321/94 (Presse 252-G)
Council Recommendation on a specimen bilateral readmission agreement between an EU Member State and a third country	30.11/1.2.1994	OJ C 274, 19.09.96
Council Recommendations (5) on the fight against trade in human beings for the purposes of prostitution	29/30.11.1993 and 20.06.1994	Press release 10550/93 (Presse 209-G)
Council Recommendation on the principles for the drafting of protocols on the implementation of readmission agreements	24.07.1995	OJ C 274, 19.09.96
Council Recommendation on concerted action and co-operation in carrying out expulsion measures	22.12.1995	OJ C 5, 10.01.1996
Council Recommendation on harmonising means of combating illegal immigration and illegal employment and improving the relevant means of control	22.12.1995	OJ C 5, 10.01.1996
Council Recommendation on local consular co-operation regarding visas	4.03.1996	OJ C 80, 18.03.1996
Council Recommendation on guidelines for preventing and restraining disorder connected with football matches	22.04.1996	OJ C 131, 3.5.1996
Council Recommendation on illegal employment	27.09.1996	Presse 247

Decisions

Subject	Adoption	Publication
EDU/Europol Appointment of Mr. Storbeck as co-ordinator of the Europol Drugs Unit, extension of the term of office of Mr. Bruggemann as caretaker deputy co-ordinator until the end of 1994	20.06.1994	Press release 7760/94 (Presse 128-G)
EDU/Europol Appointment from 1.1.1995 for three years or until the entry into force of the Convention of two assistant co-ordinators and two members of the Steering Committee	30.11/1.12.1994	Press release 11321/94 (Presse 252-G)
Council Decision on monitoring the implementation of its decisions concerning the admission of third country nationals	22.12.1995	OJ C 11, 16.1.1996
Council Decision 96/198/JHA on an alert and emergency procedure for burden-sharing with regard to the admission and residence of displaced persons (supplements Council Resolution of September 1995)	4.03.1996	OJ L 63, 13.03.1996
Council Decision on measures implementing Article K.1 of the TEU	14.10.1996	OJ L 268, 19.10.96

Conclusions

Subject	Adoption	Publication
Council Conclusions on racism and xenophobia	29/30.11.1993	Press release 10550/93 (Presse 209)
Council Conclusions on international organised crime	29/30.11.1993	Official transmission to European Parliament
Council Conclusions on the application of Article K.9 of the TEU to asylum policy	20.06.1994	Press release 7760/94 (Presse 128-G)
Means of proof in the context of the Dublin Convention	20.06.1994	OJ C 274, 19.09.96
Form of laissez-passer for the transfer of an asylum applicant from one Member State to another	20.06.1994	OJ C 274, 19.09.96
Procedure for drawing up joint reports on the situation in third countries	20.06.1994	Press release 7760/94 (Presse 128-G)
CIREA-Distribution and confidentiality of joint reports on the situation in certain third countries	20.06.1994	OJ C 274, 19.09.96
Standard form for determining the State responsible for examining an application for asylum	20.06.1994	OJ C 274, 19.09.96
Conclusions on the commission communication on immigration and asylum	20.06.1994	OJ C 274, 19.09.96

Conclusions on conditions for the readmission of persons who are illegally resident in a Member State but who hold a residence permit for another Member State (Article 8(2) of the External Frontiers Convention)	31.10.1994	Press release 10314/94 (Presse 219-G)
Enlarged and strengthened relations with third countries, in particular the countries of Central and Eastern Europe -exchanges of information in the area of international sports events	31.10.1994	Press release 10314/94 (Presse 219-G)
Conclusions of the EU Council on the operating procedures and development of the Centre for Information, Discussion and Exchange on the crossing of frontiers and immigration (CIREFI)	30.11/1.12.1994	OJ C 274, 19.09.1996
Conclusions on the implementation of Article K.5 of the TEU:-expression of common approaches in international organisations and conferences	30.11/1.12.1994	Press release 11321/94 (Presse 252-G)
Conclusions concerning a contribution to the development of a strategic plan for the Union to combat customs fraud in the internal market	30.11/1.12.1994	Press release 11321/94 (Presse 252-G)
Conclusions on relations with third countries in the JHA field	30.11/1.12.1994	Press release 11321/94 (Presse 252-G)
Council conclusions on the European Union action plan to combat drugs (1995-1999)	2.06.1995	
Council conclusions on the improvement of extradition between the Member States	23.11.1995	Presse 332
Conclusions of the Council and the Representatives of the Governments of the Member States on readmission clauses in Community agreements	20.12.1995	
Conclusions of the Council and the Representatives of the Government of the Member States on readmission clauses in mixed agreements	4.03.1996	OJ C 5, 10.01.1996

Other

Subject	Adoption	Publication
1994 programme of joint surveillance operations on air and sea traffic	21/22.2.1994	Press release 5044/94 (Presse 24-G)
Guidelines for joint reports on third countries	20.6.1994	Press release 7760/94 (Presse 128-G)
List of honorary consuls already empowered to issue visas	20.06.1994	Press release 7760/94 (Presse 128-G)
Assessment of the terrorist threat	20.06.1994	Press release 7760/94 (Presse 128-G)
Interim report to the Council on money laundering	20.06.1994	Press release 7760/94 (Presse 128-G)
Guidelines for the training of instructors	30.11/1.12. 1994	Press release 11321/94 (Presse 252-G)
European Council Report on the implementation of the action plan in the field of Justice and Home Affairs in December 1993	30.11/1.12. 1994	Press release 11321/94 (Presse 252-G)
EDU/Europol activities report 1.1.1994/31.12.1994	9/10.3.1995	Press release 5423/94 (Presse 69-G)
Strategy to combat drugs	9/10.3.1995	Press release 5423/94 (Presse 69-G)
Report on organised crime in the EU in 1993	9/10.3.1995	Press release 5423/94 (Presse 69-G)
Customs strategy at external frontiers	9/10.3.1995	Press release 5423/94 (Presse 69-G)
Council report on the fight against racism and xenophobia	9/10.3.1995	Press release 5423/94 (Presse 69-G)
Council Act on the Protocol on the interpretation by way of preliminary rulings by the ECJ on the Convention on the establishment of a European Police Office	23.07.1996	OJ C 299, 9.10.96
Council declaration on terrorism	23.11.1995	

2. European Parliament

Resolutions

Subject	Adoption	Publication
EP Resolution on discrimination against immigrant women in the laws and legal provisions of the Communities	14.10.1987	OJ C 305, 16.11.1987
EP Resolution on migrant workers from third countries	14.06.1990	OJ C 175, 16.07.1990
EP Resolution A3-0280/92 on immigration policy	18.11.1992	OJ C 337, 21.12.1992
EP Resolution A3-0337/92 on the harmonisation within the European Community of asylum laws and policies	18.11.1992	OJ C 337, 21.12.1992
EP Resolution on European Immigration Policy	15.07.1993	OJ C 255, 20.09.1993
EP Resolutions A3-0402/93 on the general principles of a European Refugee Policy	19.01.1994	OJ C 44, 14.02.1994
EP Resolution on the Schengen Agreement and political asylum	6.04.1995	OJ C 109, 1.05.1995
EP Resolution on guidelines for a Community policy on migration	9.05.1995	OJ C 141, 10.06.1985
EP Resolution on racism, xenophobia and anti-Semitism		
EP Resolution on the Europol Convention	19.05.1995	OJ C 151, 19.06.1995
EP Resolution on the kidnapping of José María Aldaya by ETA	18.05.1995	OJ C 151, 19.06.1995
EP Resolution on the communication from the Commission to the Council and Parliament on a European Union action plan to combat drugs (1995-1999)	15.06.1995	OJ C 166, 3.7.1995
EP Resolution on the progress made in 1995 in the implementation of co-operation in the fields of JHA pursuant to Title VI of the TEU	14.12.1995	OJ C 17, 22.1.1996
EP Resolution on the attack by the ETA terrorist group in Madrid	14.12.1995	OJ C 17, 22.1.1996
EP Resolution on the extradition of two presumed ETA militants	15.02.1996	OJ C 65, 4.3.1996
EP Resolution on Europol	14.03.1996	OJ C 96, 1.4.1996
EP Resolution on the Communication from the Commission on Racism, Xenophobia and anti-Semitism	9.05.1996	OJ C 152, 27.5.1996
EP Resolution on hooliganism and the free movement of football supporters	21.05.1996	OJ C 166, 10.6.1996
EP Resolution on the abduction of children of bi-national marriages in the Member States	18.07.1996	OJ C 261, 9.9.1996

3. European Commission

Subject	Publication
Communication to the Council and the European Parliament on immigration SEC (91) 1855	11.10.1991
Communication to the Council and EP on asylum SEC (91) 1857	11.10.1991
Communication to the Council and the European Parliament on the abolition of internal border controls SEC (92) 0877	8.05.1992
Communication to the Council and EP on immigration and asylum policies COM (94) 0023	23.2.1994
Communication to the Council and EP on a European Union action plan to combat drugs (1995 to 1999) COM (94) 0234	23.06.1994
Report on the operation of the Treaty on European Union SEC (95) 731 final, 10.05.1995	10.05.1995
Proposal for a Council directive concerning the right of third country nationals to travel within the Community COM (95) 346 final	12.07.1995
Proposal for a Council directive concerning the abolition of controls on persons at internal frontiers COM (95) 347 final	12.07.1995
Proposal for a EP and Council directive amending Directives 68/360/EEC and 73/148/EEC, COM (95) 348 final	12.07.1995

Introduction

Co-operation in the fields of Justice and Home Affairs, the areas covered by the Third Pillar, Title VI of the Treaty on European Union (TEU) are of direct relevance to all citizens of the European Union (EU). There is, however, much confusion inherent in the Third Pillar. It cannot be regarded in isolation due to the numerous cross references to Justice and Home Affairs related issues throughout the Treaty on European Union ranging from Article B in Title I which states that the Union shall have as one of its objectives to develop close co-operation on justice and home affairs, to the last two declarations on asylum and police co-operation annexed to the Treaty. Issues such as external border controls; drug related matters; the fight against fraud and organised crime; free movement and controls on persons are partly covered by both the First Pillar (Community legislation) and the Third Pillar. EC Treaty articles with implications for Title VI are Article 100c on Visa; Article 129 on drugs; and Article 151 on COREPER. There is Article K.9, the '*passerelle provision*' permitting under specific conditions the transfer of matters from the Third Pillar to the First Pillar of issues such as asylum, immigration and combating drugs on which the Commission can take initiative. Such a transfer requires a unanimous decision from the Council by which the First Pillar Community procedures and jurisdiction could be applied to aspects of Title VI and adopted by the Member States in accordance with their respective constitutional requirements. However, in practice it is a cumbersome process and is on the agenda of the 1996 Intergovernmental Conference for simplification.

The instruments of the Third Pillar are joint actions, joint positions and conventions. Member States and the Commission have the right of initiative in areas of common interest listed in Article K.1. The Commission, in contrast to the Member States, is exempt from proposing initiatives in the areas of judicial co-operation in criminal matters (Article K1.7); customs co-operation (Article K1.8); and police co-operation for the purposes of preventing and combating terrorism, unlawful drug trafficking and other serious forms of international crime, including if necessary certain aspects of customs co-operation (Article K.1.9).

Progress has been made on a limited number of issues falling within the competence of Title VI for example the founding of the **Europol Drugs Unit**¹, the signing of the **Convention relating to extradition between the Member States of the European Union**², and the Joint Position on the definition of the term '**Refugee**' as set out in Article 1 of the Geneva Convention of 28 July relating to the status of refugees³.

In order to increase efficiency, several Member States have proposed a reform of the procedures employed under the Third Pillar. As it stands at the moment, decisions on Member States are non-binding and pass five levels of preparation. Certain Member States have proposed the removal of one of the levels of decision-making presently used, while the co-operation of national parliaments in the drafting of legislation might improve transparency in the Third Pillar. The Irish Presidency in the second half of 1996 has already removed one of these levels.⁴ The European Parliament is to be '**consulted**' and '**informed**' on a regular basis, by the Council as to progress in Title VI although this stipulation is not always respected by the Council.

The European Parliament⁵ was critical in its submissions to the Intergovernmental Conference (IGC) of the Council's use of non-binding agreements.

¹ Joint Action on Europol Drugs Unit of 10.03.1995, OJ L62, 20.03.1995, p.1.

² This convention was signed on 27 September 1996. It is one of two conventions on extradition, the second one being the Council Act of 10.03.1995 drawing up a Draft Convention on the Simplification of Extradition Procedures between the Member States of the European Union, OJ C78, 30.03.1995, p.1.

³ Joint Position of 4 March 1996 defined by the Council on the basis of Article K.3 of the Treaty on European Union on the harmonised application of the definition of the term 'refugee' in Article 1 of the Geneva Convention of 28 July relating to the status of refugees, OJ L63, 13.03.1996.

⁴ This point was made by the President-in-Office of the Justice and Home Affairs Council, Mrs. Nora Owen, Irish Minister of Justice in an exchange of views with the European Parliament Committee on Civil Liberties and Internal Affairs on 25 September 1996.

⁵ Resolution on (i) Parliament's opinion on the convening of the IGC; and (ii) evaluation of the work of the Reflection Group and definition of the political priorities of the European Parliament with a view to the IGC. A4-0068/96, 3 March 1996.

Subjects included in Title VI of the EU Treaty should be dealt with through greater recourse to Community procedures and institutions and revised to incorporate the following:

- *strengthening the powers of the Commission (right of initiative) and the European Parliament (codecision), in order to improve the level of democratic control;*
- *ending of the frequent use of legal instruments not provided for in the Treaty on European Union (resolutions, recommendations and conventions), so as to allow democratic control to be exercised.*

Additionally, the EP proposed that the **Schengen Convention** should be progressively integrated into Union policy.⁶ Much criticism has been levelled at the poor quality of drafting and the at times unclear references in Title VI. Confusion is also compounded by the fact that both the First Pillar and the Third Pillar are concerned in part with free movement. The latter is concerned with the accompanying measures for free movement. In Title VI, because of the intergovernmental nature of co-operation, there is widespread concern about the lack of judicial control and the relative secrecy of negotiations. The following diagram shows the levels of decision-making involved in Title VI.

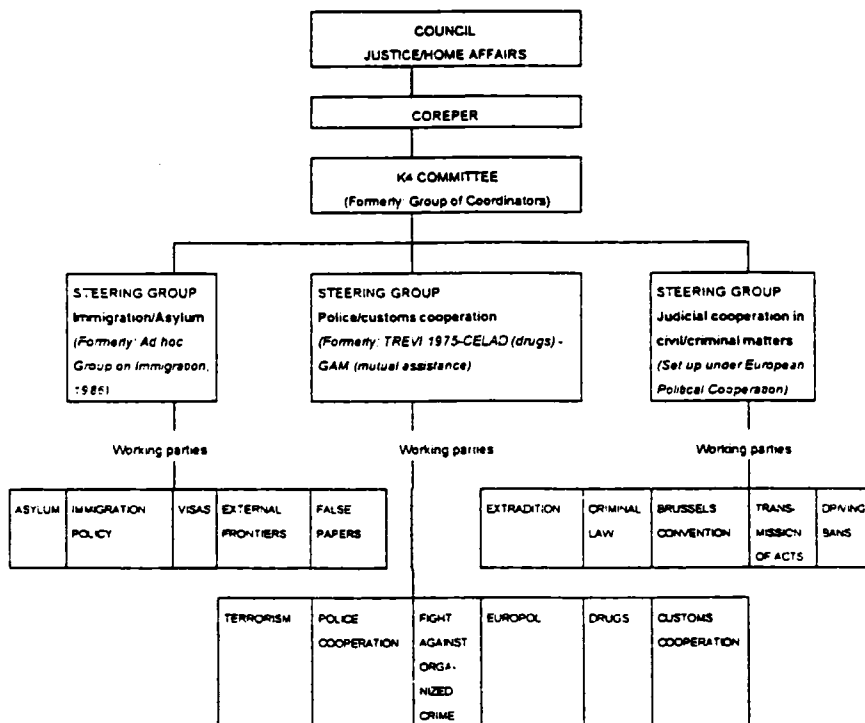
The first chapter will give a brief outline of the historical overview of the developments of intergovernmental co-operation through for example TREVI and the other intergovernmental pre-Maastricht fora for co-operation on Justice and Home Affairs issues. The second chapter will look at the structure of the Third Pillar, what is contained in each article and how the Third Pillar connects with the overall framework of the Union. Chapter three deals with free movement at the Community level, in particular, the Commission's proposals on free movement and the **External Frontiers Convention**. Chapter four discusses the progress made on free movement in the intergovernmental

⁶ Resolution on the functioning of the Treaty on European Union with a view to the 1996 Intergovernmental Conference. Implementation and Development of the Union. (A4-0102/95), 17 May 1995, drafted by Bourlanges/Martin.

context of the Schengen Convention. Although not a Community instrument, it is included in this paper as there are important considerations of security which go hand in hand with the free movement of persons. Police co-operation and the **EUROPOL Convention** are the subject of chapter five. Asylum and immigration are complex areas where national legislation still prevails. Chapter six will look at the most significant developments in the past few years in this area. Chapter seven will briefly look at fraud against the Community's budget, extradition and terrorism while legal co-operation in civil and criminal matters are the subjects of chapter eight. This paper is intended to give a broad overview of the Third Pillar by discussing the methods of its functioning and what has been achieved in its relatively short history.

Table 1

Working Structures in the fields of Justice and Home Affairs⁷



⁷ Source: Report on the Operation of the Treaty on European Union', SEC(95) 731 final, 10.05.1995.

1. Development of Intergovernmental Co-operation on Internal Affairs

The 1957 Treaty of Rome contained no provisions on matters of Justice and Home Affairs at the European Community level. Progress in this field has been on an incremental basis as a response to the transboundary threat to States' security with the increase in international organised crime, drugs trafficking, clandestine immigration and terrorism.

Much of the preparatory work for the realisation of Article 8a of the EC Treaty was carried out within the **Ad Hoc Group on Immigration**⁸, set up in October 1986 by the Justice and Home Affairs Ministers meeting in London. Based on the model of the **Saarbrücken Agreement** of 13 June 1984 between France and Germany, the development of the Schengen Agreement (1985) further enhanced intergovernmental co-operation, albeit initially among the five founding countries: France, Germany and the Benelux States. The **Schengen Agreement** and the **Schengen Implementing Agreement** of 1990 provided for the practical easing of controls at internal borders while simultaneously harmonising compensatory measures concerning checks at external borders, visas, asylum, police and judicial co-operation. Although it is intergovernmental co-operation operating outside the EU framework, Schengen has been instrumental in furthering progress on free movement, in particular, it has provided the basis for two Conventions between the EU Member States: the **Dublin Convention** determining the State responsible for examining a request for asylum and the **Draft Convention on External Frontiers**.

Co-operation in JHA was established on an Ad Hoc basis before the ratification of the Treaty on European Union. Internal security co-operation took place on several levels: bilateral, regional through for example the Council of Europe and on the global

⁸ The Ad Hoc Group on Immigration was responsible for drawing up the Palma Document on free movement. See Report of the House of Lords Select Committee on the European Communities '1992: Border Control of People', Appendix 5, Session 1988-89, 22nd Report.

level through the United Nations and Interpol. In an environment of increasing interdependence and in order to address terrorism, international fraud, drugs trafficking and organised crime, intergovernmental co-operation inevitably developed. The Member States established a number of working groups to address these issues.

The methods of working were based on informal exchanges of experience, information and expertise. All of these early examples of internal security structures display several common characteristics. Firstly, they all remained intergovernmental with the European Parliament and European Court of Justice completely excluded. The Commission may have at times participated but it had no right of initiative. The General Secretariat of the Council was sometimes involved in the preparatory stages of meetings, although Ministerial meetings were always held outside the formal structure of the Council.⁹ Secondly, the instruments used were those of international law, providing a greater degree of flexibility for the Member States, thereby avoiding the use of Community directives or regulations

Some of the earlier initiatives were taken in the context of the **European Political Co-operation (EPC)** framework. During the 1970's TREVI was created by the European Council, initially as a framework for internal security co-operation, in particular, terrorism. At a later stage, TREVI expanded in scope to include illegal immigration and organised crime.

Given the nature of co-operation on matters of Justice and Internal Affairs, concern has been expressed from many quarters, including the European Parliament, about the lack of transparency in the functioning of the Third Pillar. As O'Keeffe argues¹⁰, what was once under national parliamentary and judicial control in the Member States has been effectively withdrawn. The Commission also is critical of this aspect and proposes that the *'shortcomings of the Treaty in the fields of Justice and Home Affairs - notably its ineffectiveness and the absence of democratic and judicial*

⁹ Westlake, Martin: *The Council of the European Union*, 1995, London, Cartermill p.233.

¹⁰ O'Keeffe, David, 'A critical view of the Third Pillar' in Pauly, A. (ed), *De Schengen à Maastricht*, European Institute of Public Administration, 1995.

review - be remedied by setting clear objectives and providing for appropriate instruments and methods'.¹¹

One of the earliest fora for such co-operation was the **1967 Naples Convention**¹², on mutual assistance between customs authorities, signed by the six founding EC Member States. Co-operation continued to be developed in various intergovernmental structures throughout the 1970's and 1980's in the face of growing challenges to internal security, among them were **CELAD**¹³, an intergovernmental group of high-level national drug co-ordinators, established in 1989 to examine horizontal issues relating to drugs, the **Pompidou Group**, also set up to discuss issues concerning drugs and **TREVI** which will be discussed in greater detail (See section 1.2). Also in the 1980's Member States began to co-operate on immigration related issues at an intergovernmental level¹⁴ based to a large extent on the Palma document which contained a list of measures deemed necessary to realise the objectives of the free movement of persons within the Community.¹⁵ The following list of working groups gives an indication of the areas of activity and in some cases, duplication of tasks.

1.1 Intergovernmental Working Groups

- **Ad Hoc Working Group on Immigration**

The Group and its subgroups were set up on a UK initiative in 1986 and its remit was to '*work towards free movement in the Community in a manner*

¹¹ Reinforcing Political Union and Preparing for Enlargement. COM (96) 90 final, 28.02.1996.

¹² Convention between Belgium, Federal Republic of Germany, France, Italy, Luxembourg and the Netherlands on the provision of mutual assistance by their customs authorities, negotiated in Naples and signed in Rome on 7.9.1967. Other countries have since acceded to the Convention. Proposals have been forwarded for a Naples II Convention.

¹³ *Le Comité européen de lutte anti-drogue.*

¹⁴ O'Keffee, David, The Emergence of a European Immigration Policy, *European Law Review*, 1995, pp.20-36.

¹⁵ For further details on the Palma document see : Report of the House of Lords Select Committee on the European Communities, '1992: Border Control of People', Appendix 5, Session 1988-89, 22nd Report.

compatible with the need to combat terrorism, drug trafficking, other crime and illegal immigration'. However, the Group concentrated on immigration related aspects of free movement while its subgroups, the TREVI Groups, worked on the other issues. The Ad Hoc Working Group's subgroups were focused on Admission/Expulsion, Asylum, External frontiers, Visa Policy, Forged documents and Yugoslavia.¹⁶

- **Judicial Co-operation Working Groups**

Judicial Co-operation, for a time, took place within the European Political Co-operation (EPC) framework. Work was divided between criminal and civil judicial co-operation. The Group's primary role was to draw up a number of international conventions in civil and criminal matters. The criminal group looked at the simplification of extradition procedures and the civil group examined issues relating to the enforcement of judgements in civil and commercial matters. The Groups reported to the European Political Committee, made up of Political Directors from the Member States who were senior officials from the Foreign Office. The work of the Judicial group was also reported to the Justice Ministers in the Member States.

- **Drugs: CELAD**

The European Committee to Combat Drugs, known by its French acronym CELAD, was established on a French initiative at the European Council in 1989. Its mandate was to co-ordinate Member States' action in the fight against drugs: prevention, drug addiction, drug trafficking and common international action. The Group was made up of senior officials from the Member States.

¹⁶ Sec House of Lords Select Committee on the European Communities: House of Lords Scrutiny of the Inter-Governmental Pillars of the European Union, Session 1992-93, 28th Report of 15 June 1993.

• **Customs Co-operation: Mutual Assistance Group (MAG)**

MAG was a group dealing with operational activities on customs matters outside Community competence. It co-ordinated Community-wide intelligence gathering to detect discrepancies unlikely to be picked up by one Member State acting alone. MAG (92) was set up to provide a forum for EC customs services to develop compatible single market plans in enforcement matters, for example, to combat drug smuggling and to provide a contact point with other groups such as those in TREVI. Intergovernmental co-operation among the Member States within this group included the participation of the Commission, albeit in an informal role. This was a forum within which, from 1989 onwards, the Commission contributed to the discussion on reorganisation of the national custom services in response to the abolition of controls at intra-Community frontiers. The Commission's involvement helped to ensure that the work of MAG followed the objectives of the internal market goals and ensured greater uniformity at the external frontier through concrete measures such as the Customs Information System (CIS). Both MAG and MAG 92 have been abolished and their responsibilities transferred to the K.4 Committee.

1.2 TREVI

Prior to the ratification of the Maastricht Treaty in 1993, police co-operation between the Member States of the EU took place within the TREVI structure. It was formed on a Dutch initiative in 1975 and was outside the EC and EPC framework. TREVI developed on a gradual basis with changes in the European arena necessitating a review of the TREVI structure. TREVI's initial objective was to enhance mutual co-operation in the fight against terrorism within the Member States. This mandate was later extended to include the fight against organised crime.

Working groups and senior officials and, from 1984 also the respective Justice and Home Affairs Ministers, met regularly every six months to discuss:

- the exchange of information;
- the exchange of experience;

- the exchange of methods and techniques; and
- the building up and consolidation of networks for enhanced co-operation.¹⁷

1.2.1 Structure of TREVI

The TREVI Working Groups had the following objectives:

- **TREVI I**
Established in 1975, this group dealt with co-operation in fighting terrorism.
- **TREVI II**
Also set up in 1975, the focus of this group's activities concerned training and technical equipment.
- **TREVI III**
This working group was founded in 1985 with the objective of co-operation in the field of combating organised crime by exchanging information and expertise and the joint development of research methods and techniques in matters regarding organised crime and also drug-related crime.
- **TREVI 92**
Set up in Athens in December 1988 to examine the needs in respect of the abolition of internal borders and the increasing common threats of international organised crime as detailed in the EC 1992 programme, (free market and the abolition of passport controls) this group developed implementation measures for the police and judiciary.
- **Ad Hoc Working Group on EUROPOL**
In 1991 this group was set up to develop proposals on the organisational aspects of EUROPOL and the development of the draft Convention.

¹⁷ Peek, Johannes: International Police co-operation within justified political and juridical frameworks: Five Theses on TREVI, in: J. Monar & R. Morgan (eds), *The Third Pillar of the European Union*, Brussels, European Interuniversity Press, 1994.

The European Council				
Ministers of Justice and/or Ministers of Internal Affairs				
TREVI Senior Officials				
TREVI Working Groups				
TREVI I	TREVI II	TREVI III	TREVI '92	EUROPOL

It can be seen from the structure, the organisation of TREVI was impractical, and added to this was the further inconvenience of not having a permanent staff, secretariat, headquarters or budget. There was little flexibility in the semi-annual meetings with issues progressing from the working groups via senior officials to the respective ministers. Co-operation between the Member States was fragmented. Other inefficiencies in the functioning of TREVI have been observed:

- the co-ordinators lacked any real authority over the working groups;
- the structure of meetings were too hierarchical and too rigid in the sense that matters were passed upwards by the working groups via senior officials via ministers via co-ordinators to the European Council.¹⁸

1.3 K.4 Committee

The inclusion of co-operation in Justice and Home Affairs, inserted under Title VI of the Treaty, was a significant innovation, making a sharp contrast with earlier intergovernmental co-operation in this area, which was on an *ad hoc* basis and lacked transparency. Its incorporation within the institutional framework of the Union, in principle, allows for increased co-ordination and continuity of action.

¹⁸ *ibid.*

Since the ratification of the Treaty on European Union in 1993, Article K.4 reorganises the pre-Maastricht intergovernmental structures by making the co-ordination more centralised but at the same time introducing additional 'layers'.¹⁹ Five negotiating levels exist (although in recent months only four levels are used), i.e the Council of Ministers of Justice and Home Affairs, Committee of Permanent Representatives, the Committee of Senior Officials, three steering groups, the working parties and the horizontal information group. In implementing the Treaty, the working methods remained largely unchanged, with the result that the new structures were superimposed on those that had already existed; the K.4 Committee of Senior Officials took over the functions of the group of co-ordinators which had been set up at Rhodes, the three steering groups are an extension of the TREVI group of senior officials and the groups on immigration and judicial co-operation. These bodies have not been established as a result of the entry into force of the TEU but are indicative of the reorganisation of co-operation between the Member States which had previously existed. Hence, the criticism of duplication of technical work by the working parties and the steering groups, and of arbitration by the K.4 Committee and COREPER.²⁰

1.4 Results achieved under Title VI

The Council has made very limited use of the new instruments of joint positions, joint actions and conventions in Title VI, preferring instead to resort to recommendations, resolutions and conclusions. The European Parliament has been critical of this behaviour and also of the failure of the Council to consult and inform the EP on a regular basis. Given this outcome, the question that comes to mind is whether the legal instruments and working methods in Justice and Home Affairs matters are adequate.

¹⁹ Den Boer, Monica: Police co-operation in the TEU: Tiger in a Trojan horse?, in: *Common Market Law Review* Vol. 32, 1995, pp. 555-578, p.558.

²⁰ See footnote no.4.

1.5 Inadequacies of the Legal Instruments

The legal instruments of Title VI have been criticised for being ineffective for a number of reasons:

- the adoption and implementation of conventions is a slow process. The conventions have to be ratified by the Member States and adopted with regard to their respective constitutional requirements without reference to a specific time-frame. The Dublin Convention is one such example of a convention which has not been ratified by all signatories since it was signed in 1990²¹.
- some disagreement persists among the Member States over the nature and effect of common positions and joint actions. Their legal nature has not been clarified. Hence, there is no agreement on whether they are mandatory or not, except in cases where they contain explicit obligations.
- the unanimity requirement is one of the main reasons for preventing action or for reducing decisions to the lowest common denominator. The British stance on BSE in the first half of 1996 demonstrates the need for reform in this area.
- there is no monitoring of actions adopted under Title VI. The only exception is conventions which may be subject to the jurisdiction of the Court of Justice in the event of a dispute between the Member States.

1.6 Changes introduced by Maastricht Treaty

The Maastricht Treaty introduced changes to the forms of co-operation which existed prior to 1993. These included:

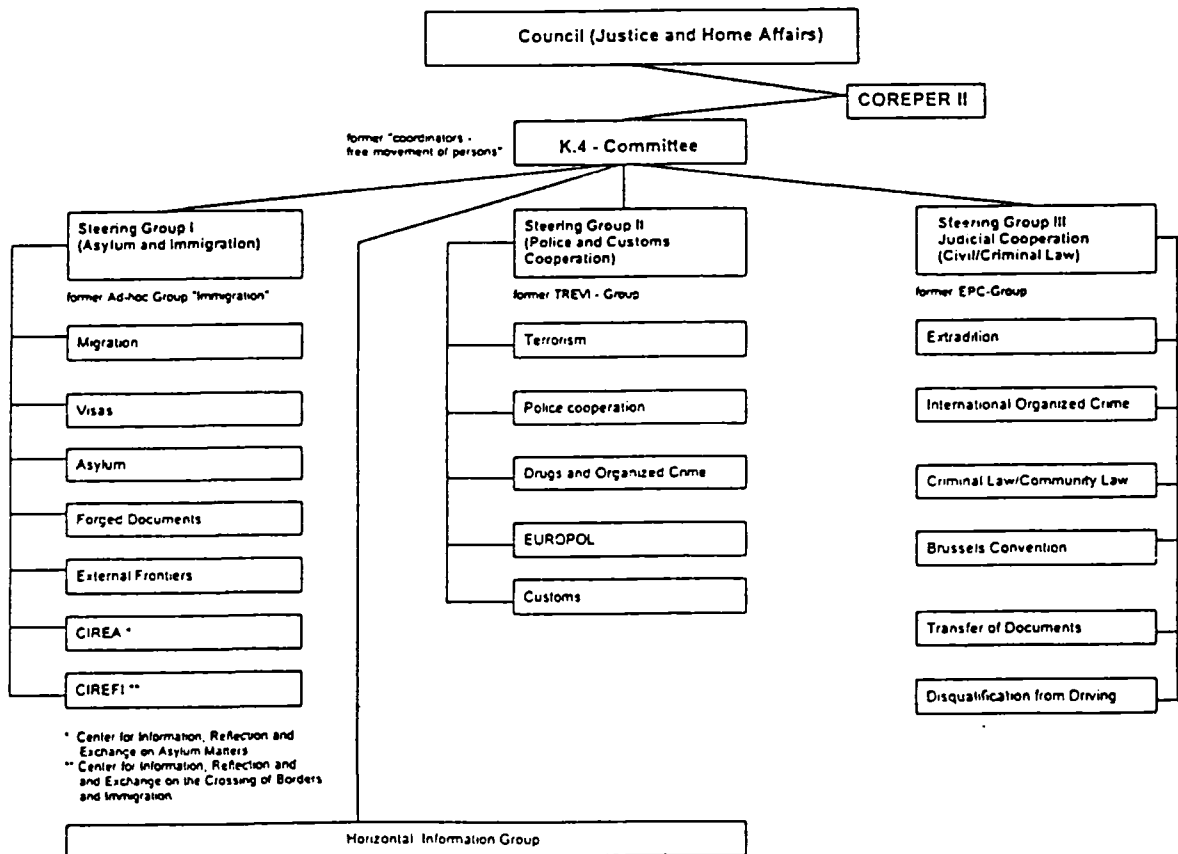
- (i) specific reference to handling matters in compliance with the European Convention on Human Rights and the Convention on the Status of Refugees;

²¹ Ireland has yet to ratify this Convention.

- (ii) on the initiative of a Member State or (in certain areas) the Commission, the Council may adopt joint positions or joint actions;
- (iii) the Council may draw up Conventions requiring national ratification and may, although it is not obliged to, give the European Court of Justice jurisdiction to interpret and apply them; and
- (iv) Article K.9 provides for the Council, acting unanimously, to transfer any area from the Third Pillar to Article 100C of the First Pillar, which has then to be adopted by the Member States in accordance with their national requirements. This Article has so far never been applied.

Table 2

Structures of Intergovernmental Co-operation in the fields of Justice and Home Affairs



Source: Report on the Operation of the Treaty on European Union', SEC(95) 731 final, 10.05.1995.

2. The Structure of Title VI

The Third Pillar is one of the four elements constituting the temple style structure of the Treaty on European Union²². The First Pillar comprises of the three European Communities and its amendments. The Second Pillar is the Common Foreign and Security Policy. Co-operation in the fields of Justice and Home Affairs is contained in the Third Pillar. The cap stone of the temple structure is the Union.

The First Pillar of the existing Economic Community was expanded by introducing the idea of economic and monetary union through the creation of a single currency and a European Central Bank. The Treaty conferred decision-making powers on the Community in many areas related to the everyday activities of citizens: a legal basis was provided for European citizenship in Article 8 of the First Pillar. Provisions were included for the promotion of education, training and youth policy (Articles 126 and 127), culture (Article 128), public health (Article 129), consumer protection (Article 129a), visa policy (Articles 100c and 100d) and industry (Article 130). Both the Second and Third Pillar do not come within the Community framework, relying instead on intergovernmental progress in these areas. This study will examine the Third Pillar of the Treaty on European Union (TEU), Title VI, Co-operation in the fields of Justice and Home Affairs (Annex 1). In order to achieve a general understanding of the provisions contained in Title VI of the Treaty on European Union on co-operation in this area, this chapter will look at what is contained in the Articles of Title VI.

2.1 Matters of Common Interest - Article K.1

Areas as matters of common interest, for the purpose of achieving the objectives of the Union, in particular the free movement of persons without prejudicing the powers of the European Community are listed in Article K. 1. The areas of common interest are:

²² See Müller-Graff P-C, *The legal basis of the Third Pillar and its position in the framework of the Union Treaty*, CMLR, 31: 493-510, 1994.

1. asylum policy;
2. the controls on the crossing of external borders;
3. immigration policy regarding nationals of third countries;
4. drugs;
5. fraud;
6. judicial co-operation in civil matters;
7. judicial co-operation in criminal matters;
8. customs co-operation; and
9. police co-operation in connection with a Union-wide system for exchanging information within a European Police Office (EUROPOL).

2.2 Compliance with International Conventions - Article K.2

These demarcated areas of common interest, according to Article K.2, have to be in compliance with the **European Convention for the Protection of Human Rights and Fundamental Freedoms** (1950) and the **Convention on the Status of Refugees** (1951). In keeping with the subsidiarity principle, Article K.2.2 specifies that Title VI *'shall not effect the responsibilities incumbent upon a Member State with regard to the maintenance of law and order and the safeguarding of internal security'*.

2.3 Right of Initiative - Article K.3

In the first six areas mentioned in Article K.1 (see above 2.1) both the Member States and the Commission have the right of initiative. It is only the Member States and not the Commission which have the right of initiative on matters concerning co-operation in criminal matters, customs co-operation and police co-operation (Article K.1.7 to 9).²³

²³ Monica Den Boer makes the observation that the Commission is excluded from the right of initiative in the area of customs co-operation, an area which has for many years experienced co-operation at the Community level through, for example, the *Matthaeus* Programme and police co-operation, *Common Market Law Review* (CMLR) 32, 1995.

2.4 Legal Instruments - Article K.3

The legal instruments provided for in the Third Pillar of the TEU for adopting legislation in the field of Justice and Home Affairs have not been clearly defined. Title VI refers to joint positions, joint actions and conventions which have not been extensively invoked since the ratification of the Maastricht Treaty. A preference has been displayed by the Council for more 'quasi-legal'²⁴ instruments in the form of resolutions, recommendations and declarations. Criticism has been expressed by the European Parliament of the Council's practice of adopting instruments for which there is no legal basis under Title VI.²⁵

2.5 Co-ordinating Committee - Article K.4

Prior to November 1993, co-operation with regard to internal security was carried out in the TREVI structure. The TREVI functions have been taken over and, added to, by the Article K.4 Co-ordinating Committee which is composed of one Member from each Member State and a Commission representative. It is charged with the dual task of co-ordinating the working groups and giving opinions for the attention of the Council, via COREPER, in those areas referred to in Article K.1, either at the Council's request or on its own initiative.

2.6 Common Positions - Article K.5

When participating in international organisations and international conferences, the Member States shall defend the common positions adopted under the provisions of Title VI. It should be remembered that this does not provide for actions which would compromise the *acquis communautaire*.

²⁴ For a more detailed overview of the instruments used for the implementation of measures adopted in the Third Pillar see 'Report on the Operation of the Treaty on European Union', SEC(95) 731 final, 10.05.1995.

²⁵ See for example the Resolution on participation by the EP in International Agreements by the Member States and the Union on co-operation in the fields of Justice and Home Affairs, A3-0436/93 in OJ C 44/180 of 14.02.1994.

2.7 Role of European Parliament - Article K.6

Article K.6 stipulates that the *'Council Presidency and the Commission shall regularly inform the European Parliament of discussions in the areas covered by this Title'*. Also, the Presidency shall *'consult the European Parliament on the principle aspects of activities in the areas referred to in this Title and shall ensure that the views of the European Parliament are duly taken into account'*. In practice, the consultation and informing of the EP by the Council has primarily taken place on an *ex-post facto* basis. Parliament is not kept up to date with current discussions on these matters of common interest and even if consulted, often there is little time to co-ordinate an opinion. The annual EP debate on the functioning of Title VI is one of the opportunities for Members to be informed by the Council as to what has been achieved in this area.

2.8 Bilateral or multilateral agreements between Member States - Article K.7

Article K.7 specifies that the provisions of Title VI shall not hinder the entering into bilateral or multilateral agreements on condition that such co-operation does not become a source of conflict with, or impede the provisions of the Third Pillar.

2.9 Application of certain provisions in First Pillar to Third Pillar - Article K.8

Provisions with regard to the institutions referred to in Articles 137-142 (European Parliament), 146, 147 (both of these refer to the Council), 150-153 (Council procedures), 157-163 (Commission) and 217 (Council acting unanimously shall determine the languages of the institutions of the Community) of European Community legislation shall apply to Title VI.

2.10 Budget - Article K.8

Administrative expenditure may be charged to the budget of the EC. With regard to operational expenditure, the Council may decide unanimously for it to be charged to the European Communities budget or to the Member States where appropriate.

2.11 *Passerelle* Provision - Article K.9

Article K.9 makes the provision that Article 100C of EC law may be applied to action in the areas referred to in Article K.(1) to (6) provided two conditions are fulfilled;

- a. the Council is in unanimous agreement; and
- b. Member States adopt the decisions in accordance with their respective constitutional requirements.

2.12 The Maastricht Treaty's innovations

The institutional and legal arrangements for co-operation on Justice and Home Affairs goes beyond simple intergovernmentalism among the Member States. Instead, it is a form of '*institutionalised intergovernmentalism*'.²⁶ The practice of intergovernmental co-operation which had existed among the Member States prior to the ratification of the TEU continues to exist, although it now operates in the framework of the EU. The Third Pillar is of a different legal nature to the Community Pillar. These variations manifest themselves in the following ways:

- The right of initiative in the areas covered in Articles K.1(1) to (6) rests with the Member States and Commission. Judicial co-operation in criminal matters, customs co-operation and police co-operation are areas of initiative solely for the Member States.
- The role of the Commission and Parliament are diminished in Title VI in comparison to the roles they have in the Community field - the Commission has a limited right of initiative (Article K.3(2)) and it is associated with the work of the Article K.4 Co-ordinating Committee. The EP is to be 'informed' and 'consulted' on the principle activities in Title VI at the discretion of the Council.
- New legal instruments have been introduced, i.e. common positions, joint actions, and conventions. No clear definitions exist as to what exactly is their legal standing.

²⁶ O'Keeffe, David: A critical view of the Third Pillar, in: Alexis Pauly (ed.), *De Schengen à Maastricht*, Maastricht, Institute of Public Administration, 1996, p.1.

Moreover, the Member States have expressed a preference for non-binding forms of legislation in the Third Pillar.

- The European Court of Justice does not have direct competence in this area although certain provisions exist if there is an action incompatible with the *acquis communautaire*. Conventions may stipulate that the ECJ shall have jurisdiction to interpret their provisions and to rule on any dispute regarding application, in accordance with arrangements which may be laid down.
- Article 9 provides a *passerelle* provision for the transfer of certain kinds of action to be transferred from the Third Pillar to the First Pillar of Community legislation.

The Maastricht Treaty does introduce provisions which had not previously existed in matters of Justice and Home Affairs but in practice the Member States have not always invoked these stipulations.

2.13 The decision-making requirements of the Third Pillar

In matters covered by Article K.1 to 6 and Article K.9, the Council decides on a proposal either from the Member States or from the Commission.²⁷ In matters covered by Article K.1.7 to 9, the Council decides on a proposal from the Member States²⁸.

Four procedures exist for decision making within Title VI²⁹:

1. Council unanimity

- Common positions (Articles K.3.2.a and K.4.3)
- Joint actions (Articles K.3.2.b and K.4.3)
- Operational expenditure (Article K.8.2)
- Decisions to apply Article 100c (Article K.9)

²⁷ See Article K.3.2 first indent.

²⁸ See Article K.3.2 second indent.

²⁹ Report on the Operation of the Treaty on European Union', SEC(95) 731 final, 10.05.1995, p.108.

- Conventions pursuant to Article K.3.2c (Article K.4.3). This is subject to ratification by the Member States.
- 2. Council unanimity and ratification by the Member States
 - Conventions (Articles K.3.2.c and K.4.3)
 - Decisions to transfer to Article 100c of First Pillar (Article K.9)
- 3. Council qualified majority
 - Measures to apply joint actions (Article K.3.2.b)
- 4. Council two-thirds majority
 - Measures to apply conventions pursuant to Article K.3.2.c. A two-thirds majority is required unless provided otherwise.

2.14 Legal nature of Third Pillar

Third Pillar provisions are not amendments to any of the three Treaties establishing the European Communities and hence do not possess the principle of the supremacy of EC law. Consequently, Title VI provisions do not automatically fall within the jurisdiction of the ECJ. The legal substance of the Third Pillar is more characteristic of public international law.³⁰ Since co-operation in JHA is not part of Community law, Third Pillar decisions have less of a binding effect.

Despite the three pillar structure of the TEU and their differing legal nature, the different pillars of the European Union are inter-connected by three means: institutional, procedural and functional.³¹ Institutional connections are provided for in Article C of the Treaty.

³⁰ Müller-Graff, P.C.: The Legal Bases of the Third Pillar and its position in the framework of the Union Treaty, in: J. Monar & R. Morgan (eds.), *The Third Pillar of the EU*, Brussels, European Interuniversity Press, 1994, p.24.

³¹ Ibid.

'The Union shall be served by a single institutional framework which shall ensure the consistency and the continuity of the activities carried out in order to attain its objectives while respecting and building upon the 'acquis communautaire'.

Procedural connections arise from the institutional procedures i.e. the right of the European Parliament to be informed and consulted and the right of the Commission to initiate legislation in the areas referred to in Article K.1 (1-6). Despite providing for EP participation through Article K.6, in practice it often seems that the single institutional framework is more apparent than real.

The functional connection or the substance of the links within the temple structure are set out in Article 7a EC Treaty.

'The internal market shall comprise an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured in accordance with the provisions of this Treaty'

The realisation of this objective has been prevented, in practice by the national measures in the areas of JHA. Areas of relevance include immigration, terrorism, asylum and judicial co-operation. As Müller-Graff points out, co-operation in JHA is a political consequence of the objective of attaining an internal market.

2.15 Application of Article K.9

The possibility of applying Article K.9 for the purposes of transferring certain areas from Article K.1 to Article 100c has been examined once before with regard to Declaration No. 31 on asylum annexed to the Final Act of the TEU. The Declaration requests the Council to consider as a matter of priority questions concerning asylum policies in the Member States, with the aim of adopting, by the end of 1993, common action to harmonise certain aspects of asylum. The first examination was based on the Commission report which analysed the advantages of transferring asylum policy to the First Pillar. At the time in 1994, both the Commission³² and the Council³³ agreed that it

³² SEC (93) 1687 of 4.11.1993.

³³ See conclusions of Greek Presidency of 20.06.1994.

would be advisable not to proceed with the rather cumbersome process inherent in Article K.9 before the actual provisions of the TEU had been tested.

2.16 Commission Perspective on the application of Article K.9

At the request of the European Parliament, the Commission produced a second report in 1995 on the application of Article K.9 of the TEU.³⁴ The report stated that Article K.9 reflects the political commitment to the integration of the provisions of the Third Pillar into the First Pillar. However, as the Commission report observes, Article K.9 does not go far enough in satisfying these objectives. The '*communautarisation*' of certain aspects of the Third Pillar is incomplete and inadequate. The reasons for this include:

- restrictions inherent in Article 100c, i.e. European Parliament's role of consultation;
- the transfer would exclude judicial and police co-operation in criminal matters and customs co-operation;
- the European Parliament is involved under the *least complete formula*³⁵ of simple consultation;
- the Article K.9 provision is very cumbersome in that it has a 'double lock' procedure, requiring firstly, unanimity in the Council and secondly, the Member States must adopt that decision in accordance with their respective constitutional requirements.

This report concluded that the objective of '*communautarisation*' of major aspects of the Third Pillar, shared by the EP and Commission, would be more effectively pursued in the context of the Intergovernmental Conference rather than through an Article K.9 initiative. The IGC could provide a wider context in that it would not be bound by the limitations inherent in Article 100c.

³⁴ COM (95) 566 final, 22.11.1995.

³⁵ Ibid.

2.17 European Parliament's Position on the application of Article K.9

The European Parliament has called for the application of the transitional clause set out in Article K.9 and a partial re-negotiation of the Third Pillar at the IGC³⁶. This would increase the involvement in the Third Pillar of the European Parliament, ECJ, Court of Auditors and the Commission. If in the case of no debate on the Third Pillar at the IGC, the EP will request that Article K.9 be applied immediately with its cumbersome procedure.³⁷ In a resolution tabled by the Civil Liberties Committee³⁸, the EP agrees with the Commission that it is unwise to communitarize various areas of the Third Pillar simultaneously both at the Intergovernmental Conference and by an initiative under Article K.9, given the likelihood of duplication. Moreover, the EP shares the Commission's view that the IGC is currently the more appropriate forum for achieving the objective of communitarization on certain policy areas, for example, asylum, immigration, policy on third country nationals, provisions on the crossing of external borders, the fight against drug trafficking, fraud on an international scale and certain areas of co-operation in the field of justice. The draft resolution also calls on the IGC to extend Article K.9 to all remaining areas of Article K.1 and to provide for the Council to decide by qualified majority on the application of K.9.

³⁶ EP Resolution, OJ C 151 19.06.1995, p. 56.

³⁷ OJ C 18, 23.01.1995, p. 27.

³⁸ PE 217.132/A, 8 May 1996.

3. Community provisions for the free movement of persons

The free movement of persons is one of the four fundamental freedoms upon which the EU is founded. Despite the entry into force of the internal market on 1 January 1993, this freedom has not been fully established in the EU. The concept of one market without internal frontiers is elaborated in Article 7a TEU but after a time it became apparent that different States had diverging interpretations of the provision: while the Commission and the majority of Member States understood Article 7a (formerly Article 8a EC Treaty) to mean the abolition of all border controls for EC citizens as well as third country nationals, other Members, in particular the UK, held that Article 7a only applied to EC citizens and allowed for maintaining controls on third country nationals. Under these circumstances, the States which have interpreted Article 7a in a wider sense have joined the Schengen Convention.

Article 7a of the TEU states:

The internal market shall comprise an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured in accordance with the provisions of this Treaty.

There is however much contention as to whether free movement is to apply only to Community nationals and not to the broader term of 'persons' to include non-Union citizens. The Commission in its interpretation stated '*any interpretation of Article 8a (now 7a) that confined its effects to Community nationals only would deprive that article of any practical effectiveness*'.

The Commission forwarded to the European Parliament on 12 July 1995 three proposals for directives which aim to meet the requirements of Articles 3³⁹ and 7a EC Treaty on the free movement of persons within the internal market. These proposals are:

³⁹ Article 3(d) is concerned with the entry and movement of persons in the internal market as provided for in Article 100c.

1. Proposal for a Council directive concerning the right of third country nationals to travel within the Community (COM (95) 346 final);
2. Proposal for a Council directive concerning the abolition of controls on persons at internal frontiers (COM (95) 347 final); and
3. Proposal for a European Parliament and Council Directive amending Directive 68/360/EEC on the abolition of restrictions on movement and residence within Community for workers of Member States and their families and Directive 73/148/EEC on the abolition of restrictions on movement and residence within the Community for nationals of Member States with regard to establish and the provision of services (COM (95) 348 final).

Free movement falls within the competence of the First Pillar while the 'essential accompanying measures' are areas within the Third Pillar. The Commission is determined to have the three proposals for the directives fall under the First Pillar while the UK backed by Portugal and others want this matter to be examined in the framework of the Third Pillar. Belgium shares the view of the Commission.⁴⁰

These draft directives are less comprehensive than the provisions of the Schengen Convention. Article 1 of the Schengen Convention defines an alien as a third country national. The Commission proposal uses the term 'non-Union citizen'. Under the Schengen agreement, the right to travel is granted to those in possession of provisional residence permits or travel documents issued by the Contracting Parties. The Commission proposals do not include this provision. Article 22 of the **Schengen Agreement** specifies that third country nationals must report their presence immediately upon arrival (although this does not happen in practice) while the Commission proposals leaves it to the discretion of the Member States.

⁴⁰ Council meeting of Internal Market Ministers, 28 May 1996.

1 Background to the Commission proposals: European Parliament's position on the three Commission proposals on free movement

As the Commission had failed to submit proposals with regard to the free circulation of persons in the EU as provided for in Article 8a EC Treaty, the EP initiated legal proceedings against the Commission.⁴¹ In the light of the Commission's proposals, the EP assumed that if the proposals could be regarded as a satisfactory basis for fulfilling the requirements of Article 8a, the proceedings were to be discontinued.⁴²

To avoid further legislative delays on the free movement of people, the Council suggested that Member States use an intergovernmental agreement to tackle the issue. This Council Document 'Draft Joint Action relating to travel facilitation for third country nationals residing in a Member State for the purpose of entry into another Member State for a short stay or transit' differs marginally in title from the wording of the Monti initiative but no difference in content is evident.⁴³ The Council instrument sets out as its objective that the granting of travel facilitation in such a case '*shall be subject to possession of a valid travel document and a currently valid residence document allowing re-entry to the Member State of residence, and to the existence of sufficient means of subsistence*'. (Recitals 3 and 4) This approach would allow non-EU citizens living in the Union to use their legal residence permits as formal documents to travel to other EU countries for up to three months without having to apply for visas.

The idea was vociferously attacked by MEP's during the 16 July 1996 plenary session. As a protest, the European Parliament after debating the three reports, refused to give its required opinion on the Commission's three proposals on free movement because Members had been informed that Council was debating a joint

Article 175 reads 'Should the European Parliament, the Council or the Commission, in infringement of this Treaty, fail to act, the Member States and the other institutions of the Community may bring an action before the European Court of Justice to have the infringement established'.

This case C-445/93 is still before the Court of Justice.

Esders, Elke, Administrator for the Civil Liberties and Internal Affairs Committee.

action, an intergovernmental third pillar instrument, on the same issue as one of the Monti initiatives (Linzer report) which specified a first pillar community instrument. Commissioner Monti, the Internal Market Commissioner cautioned that under such a scheme, governments would still have the right to check a third country citizen's documents and to send someone back to his country of residence without any possibility of appeal. The Draft Joint Action reads as though its purpose was to list criteria for preventing third-country nationals from travelling within the Union and how to send them back to the country they came from while the Commission proposal is wider in scope and includes the possibility of different status of third country nationals.

The Irish President in Office of the Justice and Home Affairs Council appearing before the European Parliament in September 1996, stressed that there was no Council intention of replacing the Commission proposal with an alternative intergovernmental one. The withholding of the European Parliament's opinion may be regarded as a partial victory for the EP in ensuring that Community measures are not overrun by diluted intergovernmental measures. The European Parliament adopted the three reports on 23 October 1996.

3.2 The right of third country nationals to travel within the Community - COM (95) 346 final⁴⁴

This proposal, so as to give nationals of non-member countries lawfully in the territory of one Member State the right to travel for a brief stay to another Member State, aims to co-ordinate the legislation of the Member States. The right of entry and residence of third country nationals, even for a short period in the territory of a Member State is governed by the divergent domestic laws of the Member States, most of which require third country nationals to obtain visas before travelling, even though the third country national is legally present on the territory of another Member State. The completion of the internal market requires that, in principle, all persons who are

⁴⁴ Report of the EP Committee on Civil Liberties and Internal Affairs, Rapporteur: Mr. Milan Linzer, A4-0218/96, PE 217.477/fin, 27 June 1996.

lawfully in one part of the market should have the right to move to other parts and such movements should not be subject to controls when the internal frontiers to the market are crossed. Thus, the Commission's proposal requires the Member State to grant third country nationals legally present on the territory of one Member State the right to travel to another Member State, provided they satisfy certain criteria. A third country national;

- must be in possession of a valid residence permit and a valid travel document; and
- must have sufficient means of subsistence both to cover the period of the intended stay or transit to enable him to return to the Member State which issued the residence permit, or to travel to a third country into which he is certain to be admitted.

Article 5 adds that third country nationals exercising their right to travel may be required to report their presence in the Member States territories.

In the absence of this Directive, an individual could cross an external frontier into a Member State if he possessed a visa or residence permit issued by another Member State, but would not be able to cross the internal frontier. Once this directive has been implemented, third-country nationals can cross frontiers without being checked. They must, however, fulfil the requirements set out in the national legislation of the Member State they enter. This directive is expected to simplify the procedure for third country nationals legally resident in the EU, however this remains questionable. The directive is not clear on what significance is intended by the distinction between third country nationals with a residence permit and those who hold a visa. On 21 April 1994⁴⁵, the EP expressed the opinion that all provisions regarding visas should be included in Council Regulation (EC) No. 2317/95 of 25 September 1995 determining the third countries whose nationals must be in possession of visas when crossing the external borders of the Member States. The Council disregarded this view. Furthermore, although the right to travel is being granted, other conditions of free

⁴⁵ OJ C 128, May 1994, p. 350.

movement, for example, residence permits and reporting obligations, areas of national legislation are not being harmonised.

According to the Commission's explanatory memorandum, social aspects of this measure would mean that several million foreign residents, including members of Union citizens' families will be able to visit other Member States without undergoing any formalities. This in turn would lead to an increase in tourism, cross-frontier purchase of goods and an increased awareness of European culture. This proposal will, if adopted, go some way towards facilitating the right to travel for third country nationals within the EU who while perhaps entitled to hold a European Union passport, have chosen to retain a third country passport.

3.2.1 European Parliament's position on the right of third-country nationals to travel in the Community

The European Parliament adopted the report drafted by Mr. Milan Linzer, MEP on the right of third country nationals to travel in the Community by 352 votes to 31, with 92 abstentions on 23 October 1996. One of the amendments adopted underlines the EP's opinion that the freedom of movement of persons cannot be made dependent on accompanying measures. The EP also specified that the maximum duration of 'stay for a short time' means a stay of not more than six months. The Commission's initial proposal stipulating that a third country national must have sufficient means of subsistence, both to cover the period of the intended stay or transit and to enable him to return to the Member State which issued the residence permit, or to travel to a third country into which he is certain to be admitted was rejected by the Plenary. The report reiterated that Member States undertake to adhere to the provisions of the European Convention on the Protection of Human Rights and Fundamental Freedoms and not to expel to another Member State persons who should be afforded protection in their State on the basis of the Convention. (Annex 2)

3.3 Proposal for a Council Directive on the elimination of controls on persons crossing internal frontiers - COM (95) 0347 final⁴⁶

The directive would establish a general rule that all persons irrespective of their nationality, shall be able to cross Member States' frontiers within the Community at any point without such crossings being subjected to any frontier control or formality (Article 1.1). However, the elimination of controls for persons crossing internal frontiers would not interfere with the right of Members States' to exercise their general powers of law enforcement nor would it hinder the obligation to possess and carry travel documents (Article 1.2). A Member State is permitted if faced with a serious threat to public policy or public security to reinstate frontier controls for a maximum period of 30 days. The Commission and other Member States must be immediately notified and supplied with the relevant information (Article 2.1). In circumstances where the extension goes beyond the initial 30 days period, the Commission and Member States must be consulted beforehand. A 'Member State's frontier within the Community' is defined as common land frontiers, airports for intra-Community flights and sea-ports for intra-Community sea crossings.

In effect, this involves extending to all Member States the provisions, with certain modifications, of the Schengen Agreement in force among the seven members. The Commission's explanatory statement refers to the 'accompanying measures' which must be effective prior to the entry into force of the abolition of intra-Community controls: the Dublin Convention, the External Borders Convention, and the European Information System. Although the two visa regulations have been adopted, it will nonetheless be some time before the other measures are functioning. The Dublin Convention, signed in 1990, still has to be ratified by Ireland and the Netherlands while the External Frontiers Convention has been blocked because of the disagreement between the UK and Spain over Gibraltar.

⁴⁶ See Report of the Committee on Civil Liberties and Internal Affairs, Rapporteur: Mr. Glyn Ford, A4-0219/96, PE 217.482/final, 27 June 1996.

Further political difficulties seem likely to overshadow this directive. The British Government has declared that it will vote against this directive which means that as Article 100⁴⁷ is its legal basis, it cannot be adopted. France as a Schengen Member, has invoked Article 2 of the Schengen Agreement to introduce border controls so it is unlikely that this will change under Community law. Also, as the Commission has made this Directive dependent on the functioning of other Third Pillar measures. It appears unlikely that this directive will be adopted in the near future.

3.3.1 European Parliament's position on the Directive on the elimination of controls on persons crossing internal frontiers

The Plenary session of the EP accepted the fundamental principle of the elimination of controls on persons crossing internal frontiers independent of their nationality by 341 votes to 42 and 58 abstentions on 23 October 1996. The report reiterated that Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive not later than 31 December 1996. Moreover, Member States shall inform the Council and the EP of the measures which they adopt with a view to the free movement of persons in addition to those to transpose this Directive. A delay in introducing the additional measures does not justify a delay in its entry into force. (Annex 3)

⁴⁷ 'The Council shall, acting unanimously on a proposal from the Commission and after consulting the European Parliament and the Economic and Social Committee, issue directives for the approximation of such laws, regulations or administrative provisions of the Member States as directly affect the establishment or functioning of the common market.'

3.4 Proposal for a European Parliament and Council Directive amending Directive 68/360/EEC on the abolition of restrictions on movement and residence within the Community for workers of Member States and their families and Directive 73/148/EEC on the abolition of restrictions on movement and residence within the Community for nationals of Member States with regard to establish and the provision of services COM (95) 348 final⁴⁸

This proposal is designed to bring existing legislation on the rights of entry and residence of different categories of Union citizens into line with the abolition of internal frontier controls. These two Directives abolished most of the restrictions on movement and residence within the Community for Member State nationals and their families as regards taking up and pursuing employment, as well as establishment and the provision of services. However, the second sentence of Article 2(1) and Article 3(1) of the respective Directives did not affect the right of the Member States to require an identity card or passport to be shown by persons entering their territory. The proposal aims to remove from the Directives 68/360/EEC and 73/148/EEC the provisions whereby borders within the Community may only be crossed on production of a valid identity document. This would mean the abolition of border controls at internal borders not only for employees and self-employed persons and their families, but also for all other beneficiaries of freedom of movement such as pensioners and students since these corresponding Directives specifically refer to Articles 2 and 3 of Directive 68/ 360/ EEC.⁴⁹ Not all Member States are convinced of the need for this proposal. The European Parliament questions the distinction between the 'right to travel' and the 'elimination of border controls'. The procedure to be applied is the co-decision procedure.

⁴⁸ See Report of the Committee on Civil Liberties and Internal Affairs, Rapporteur: Mr. Klaus-Heiner Lehne, A4-0095/96. PE 214.310/final, 26 March 1996.

⁴⁹ See Directive 90/ 346/ EEC of 29.06.1996, OJ L 180, 13.7.1990, p.26, Directive 90/365/EEC of 29.06.1996, OJ L 180, 13.7.1990, p.28, and Directive 93/96 of 29.10.1993, OJ L 317, 18.12.1993, p.59.

3.4.1 European Parliament's position on the suppression of identity controls at internal frontiers

On 23 October 1996, the EP adopted the report drafted by Mr. Klaus-Heiner Lehne on the suppression of identity controls at internal frontiers. The Plenary adopted two amendments to the Commission's proposals. Firstly, the EP deleted Article 1(3) in both Directives which stated;

Member States may require the person referred to in Article 1 to be in possession of a valid identity card or passport, if necessary bearing a visa, when they exercise their right of free movement.

Secondly, the EP added that these rules shall be interpreted as conferring the same rights on members of the family, whether they are European citizens or nationals of non-member countries. (Annex 4)

3.5 External Frontiers Convention

In a Communication to the Council and European Parliament on 10 December 1993, the Commission submitted (a) a proposal for a decision based on Article K.3 TEU establishing a Convention on the crossing of external frontiers of the Member States; and (b) a proposal for a Regulation, based on Article 100c EC, determining third countries whose nationals must be in possession of a visa when crossing the external border of Member States.⁵⁰ The second proposal, excluding the EP's views, was adopted on 25 September 1995 requiring nationals of third countries on a common list in the Annex, to be in possession of visas when crossing the external borders of the Member States.

Agreement has not yet been reached on the external frontiers proposal which was an attempt to revive the External Frontiers Convention. It is one of the 'flanking measures' for the free movement of persons in the internal market. European Council

⁵⁰ COM (93) 684 final.

meetings have repeatedly called for the signing of this Convention as soon as possible.⁵¹ Three outstanding issues must be resolved:

1. voting arrangements for the adoption of measures implementing the convention (Article 26);
2. the competence of the European Court of Justice (Article 29); and
3. the UK and Spain have failed to reach an agreement on the territorial scope of the Convention with regard to Gibraltar.

The text of the Convention was revised in July 1995, reflecting the outcome of the proceedings of the German and French Presidencies in their efforts to resolve the situation. At the November 1996 Justice and Home Affairs meeting, the outstanding areas of disagreement continued to be the problem of territorial application and the role of the ECJ.⁵² This version is in the form of a Council Act, drawing up the Convention of the crossing by persons of the external frontiers of Member States of the EU, to which the actual Convention is attached as an Annex. The Act, to be signed by the President of the Council, recommends the adoption of the Convention by the Member States, in accordance with their respective constitutional rules.

3.6 Overview of the contents

External frontiers are defined in Article 1 as:

- (i) the land frontier of a Member State without any common border with another Member State, and maritime frontiers;
- (ii) airports, save as regards internal flights;
- (iii) seaports, save as regards internal connections within a Member State and regular ferry links between Member States.

⁵¹ It was discussed at Essen in December 1994, Cannes in June 1995 and Madrid in December 1995.

⁵² Council of the European Union, General Secretariat Press Release 12104/96 (Presse 346) of 28/29 November 1996.

There are general principles on crossing external frontiers⁵³ and control arrangements⁵⁴, provisions for controls of third country nationals residing in a Member State⁵⁵, a list of persons to whom Member States shall refuse entry to their territories⁵⁶ and guidelines on the issue of residence permits⁵⁷.

The exchange of information is provided for in Article 13. The creation, organisation and operation of the computerised information system will be the subject of the Convention on the European Information System (EIS). A joint list facilitating the exchange of information, contained on the EIS, may be consulted by the competent authorities for processing visa applications, frontier controls, police checks and the admission and regulation of the stay of persons who are not nationals of a Member State. Guarantees will be included in the EIS Convention regarding the processing of personal data.

Accompanying measures include provisions on the responsibility of carriers⁵⁸. Airline, rail and shipping companies and overland coach transporters are obliged to ensure persons coming from third countries have valid travel documents. Failure to comply with the rules will result in the imposition of sanctions against the carrier⁵⁹.

Member States shall undertake to progressively harmonise their visa policies. Conditions are provided for governing the issue of uniform visas⁶⁰, multiple-entry uniform visas,⁶¹ extension of stay⁶² and visas with restricted territorial validity⁶³. Greece, the Netherlands and the UK have expressed reservations on the provisions for

⁵³ Article 2 of the External Frontiers Convention.

⁵⁴ Article 5

⁵⁵ Article 8

⁵⁶ Article 10

⁵⁷ Article 11

⁵⁸ Article 14

⁵⁹ This article may conflict with the provisions of the Chicago Convention.

⁶⁰ Article 19

⁶¹ Article 21

⁶² Article 23

⁶³ Article 25

long-stay visas⁶⁴. A foreign national holding a long-stay visa issued by a Member State is permitted to *'travel through the territory of the other Member States in transit'*.

Greece has expressed reservations on the reviewed wording of Article 24 which permits a Member State, on humanitarian grounds or in the national interest or because of international commitments, to issue a person who does not meet all of or some of the conditions a visa valid only in its territory or in the territory of more than one Member State. The French Presidency proposed inserting an Article 24a with regard to a Member State receiving a request for a visa from a person entered in the EIS as inadmissible by another Member State. If the person is entitled to a visa under Community law although not a citizen of the EU, the matter shall be referred to the Member State which entered the information. A visa may only be refused on the grounds of a serious threat to public order, public security or public health. If, following talks between the two Member States, a visa is issued, the Member State which entered the person concerned in the EIS shall withdraw the entry. Should the visa not be issued, the Member State which entered the information may either refuse a visa or issue a visa valid only for its own territory.

The implementing measures for the Convention shall be adopted by the Council unanimously⁶⁵. However, the Council acting unanimously, may draw up a list of situations in which decisions shall be taken by a majority of two thirds. 'Substantive reservations' were expressed by the Commission and the Belgian and Netherlands representatives who wanted implementing measures adopted by a qualified majority.

Discussions continue on whether or not the jurisdiction of the ECJ should be included in the Convention. As it stands at the moment, the ECJ shall have jurisdiction *'to give preliminary rulings concerning the interpretations of this Convention; reference to the Court shall be made as provided for in the second and third paragraphs of Article 177 of the Treaty establishing the Community'*.

⁶⁴ Article 25

⁶⁵ Article 26

4. The Schengen Agreement

4.1 Principal aim of the Convention

In the absence of progress on the free movement of persons at the EU level, the most significant development on this issue has been the conclusion of the two Schengen Agreements; the area of free circulation set up by the **Schengen Agreement of 14 June 1985** which was supplemented by the **Schengen Implementing Convention of 19 June 1990** and became operational on 26 March 1995. Seven countries have so far implemented Schengen: Belgium, France, Germany, Luxembourg, The Netherlands, Portugal, Spain. Since the Schengen Implementation Agreement became operative in March 1995, it has marked a major point in the process of developing practical implementing measures to abolish internal borders and the realisation of free movement of persons among Schengen Member States. From its inception the Schengen Members have understood the Schengen project as a trial run or *experimental garden* for the free movement of persons in the Union.⁶⁶ Consequently, it has created two areas and two levels of legislation in Europe.⁶⁷ This example of a two-speed Europe is outside the Union framework but operates within the Union 'orbit'⁶⁸ since all its Members are Union members and the implementing convention respects the supremacy of Community law: '*The provisions of this Convention shall apply only in so far as they are compatible with Community law*'.

Schengen's Executive Committee⁶⁹ has granted observer status, since 1 May 1996, to the five **Nordic Passport Union** Members. Denmark, Finland and Sweden will become full members of the Agreement at the end of 1996, while non-EU

⁶⁶ Woltjer, Aleidus: Schengen: The way of no return? Maastricht Journal of European and Comparative Law, 1995, Vol.2, No.3, p.257

⁶⁷ Nanz, Klaus-Peter: Free Movement of persons According to the Schengen Convention in the framework of the European Union, in: A. Pauly (ed.) De Schengen à Maastricht, p.63.

⁶⁸ CMLR (32) 1995, p.674.

⁶⁹ See minutes of 18 April 1996 Schengen Executive meeting.

members Iceland and Norway will have associate status.⁷⁰ This move of opening Schengen to non-EU countries is regarded as a diplomatic measure to take account of the Passport Union which enables the free movement of persons within the five countries and has existed among the Scandinavian countries since 1958. It is not to be seen as a precedent.

One year after the application of the Schengen Implementing Convention certain restrictions still exist. Not all members are technically able to apply its provisions, for example Italy had difficulties in reaching the standard of the data protection laws. The French authorities have abolished their border controls on persons at the borders with Germany and Spain but have maintained controls with the Netherlands, Belgium and Luxembourg pending 'operational solutions' to be defined in the fight against drugs trafficking. Bilateral agreements among the Schengen members have helped to reinforce co-operation. On 4 June 1996, Belgium, Luxembourg and the Netherlands signed a cross-border police co-operation agreement. Belgium and Luxembourg agreed to create joint police offices and patrols starting in September 1996.⁷¹ Despite setbacks, all the members of the Schengen space are in agreement that the Schengen Agreement 'represents an added value as regards free movement and security'.

⁷⁰ Associate status is understood to mean that the Convention will apply but that these two States will not be able to participate in the decision-making of Schengen.

⁷¹ Agence Europe, No. 6743, 7 June 1996.

Schengen Members

Table 3

Signatories to the Agreement of 14 June 1985 & Implementing Convention of 19 June 1990¹	Implemented 26 March 1995	Observer Status as of 1 May 1996³
Belgium	Belgium	Denmark
Luxembourg	Luxembourg	Sweden
Netherlands	Netherlands	Finland
France	France	Iceland
Germany	Germany	Norway
Italy - 25 June 1991 ²		
Greece - Observer from June 1991, joined in November 1992		
Spain - June 1991	Spain	
Portugal - June 1991	Portugal	
Austria - 26 April 1995		

¹ Ireland and the UK are not parties to the Convention. The UK is opposed to the abolition of controls. Both countries share a Passport Union.

² Following the JHA Council meeting in June 1996, the Italian Internal Minister announced that Italy will implement the Agreement in 1997.

³ Denmark, Sweden and Finland will become full members of the Agreement at the end of 1996 while Iceland and Norway will have associate status which means that the convention will apply, but they will not be able to participate in the decision-making process.

4.2 The Structure of the Convention

The Schengen Implementing Convention is structured in the following way:

Title I	Definitions
Title II	Abolition of checks at internal borders and movement of persons
Title III	Police and Security
Title IV	The Schengen Information System
Title V	Transport and Movement
Title VI	Protection of personal data
Title VII	The Executive committee
Title VIII	Final provisions

The Convention attempts to address two apparently diverging goals:

- (i) the abolition of internal border controls for the free movement of persons with the creation of what the Commission describes as 'flanking measures', in order to strengthen external border controls; and
- (ii) measures to improve security through the combating of crime and drug trafficking. Illegal immigration is also addressed by the Convention.

4.3 Accompanying Measures

The compensatory measures as defined in the Schengen Convention are prerequisites for the lifting or restricting of internal border controls. These measures must be effective in order to achieve the aims of Article 2.1 of the Convention:

'Internal borders may be crossed at any point without any checks on persons being carried out'.

These include external border controls, a common visa policy, the possibility of processing asylum applications, police co-operation and judicial co-operation and information exchanges. Essential to the effective operation of the Convention, is the technical compensatory measure of the **Schengen Information System (SIS)** which

deals with information concerning the entry of third country nationals, issuing visas and police co-operation.

4.4 Movement in the Schengen Area (Articles 18 to 25)

Third country nationals travelling into the Schengen area for up to three months have to fulfil the entry requirements. As internal borders no longer exist, entry at the external border means entry into all of the Schengen space. Article 1 of the Convention defines an alien as any person other than a national of a Member State of the EU. Aliens who have satisfied the conditions of entry according to Article 5.1 and those holding a residence permit issued by a contracting party may, in principle, move freely within the territory for up to a maximum of three months. These third country nationals are obliged to declare themselves to the competent authorities of the State which they enter within three days of arrival. In cases where conditions are not met, the Convention's provisions permit that entry may only be granted in exceptional circumstances, in particular on humanitarian grounds, for that State whose external border is crossed.⁷² These conditions do not apply to the right of asylum which is covered by national provisions.

4.5 Asylum (Articles 28 to 39)

The Schengen Convention does not aim to harmonise asylum legislation, rather it sets out criteria for defining asylum procedures once an application has been lodged. Every asylum application submitted by a third country national within the jurisdiction of the Schengen States must be examined.⁷³ The State responsible for examining an application is decided according to the conditions set out in Article 30. The criteria for the **Dublin Convention** reflects the **Schengen Convention** provisions on asylum. The Schengen States have agreed, on the basis of Article 142 of the Schengen

⁷² Although there are Convention provisions, this does not happen in practice.

⁷³ Article 29.1 of the Schengen Convention.

Convention, to withdraw the asylum provisions of the Agreement once the Dublin Convention has been ratified by all its signatories.⁷⁴

4.6 Police and Legal co-operation (Articles 39 to 91)

Article 39 establishes the general principles for co-operation in this field:

'The contracting parties undertake to ensure that their Police authorities shall, in compliance with national legislation and within the limits of their responsibilities, assist each other for the purpose of preventing and detecting criminal offences'

The scope of the co-operation is limited. A State requesting information from the police services of another State must base its request on the existence of specific offences. Moreover, only certain criminal offences may give rise to the practice of this police co-operation (Article 40.7)⁷⁵.

4.7 Schengen Information System (Articles 92 to 119)

The Schengen Information System is the 'heart' of the Schengen Implementation mechanism.⁷⁶ The information for the SIS is supplied by the national authorities and centralised in the respective centres of the contracting States - **National Schengen Information Systems (NSIS)** and the **technical support unit in Strasbourg (CSIS)**. At the Executive Committee meeting of 27 June 1996, Ministers gave instructions to prepare SIS for the enlargement to incorporate the Nordic States.⁷⁷ The NSIS in the Schengen Members are linked on-line with the CSIS which ensures that the data-files of all the members remain identical. Each Member State is obliged

⁷⁴ Article 142 of the Schengen Convention states: *When Convention are concluded between Member States of the European Communities with a view to the completion of an area without internal frontiers, the Contracting Parties shall agree on the conditions under which the provisions of the present Convention are to be replaced or amended in the light of the corresponding provisions of such Conventions.*

⁷⁵ The crimes listed are: assassination, murder, rape, arson, counterfeiting, armed robbery and receiving stolen goods, extortion, kidnapping and hostage taking, trafficking in human beings, illicit trafficking in narcotic drugs and psychotropic substances, breach of laws on arms and explosives, use of explosives and the illicit carriage of toxic and dangerous waste.

⁷⁶ Woltjer p.265.

⁷⁷ Minutes of the Executive Committee meeting, La Haye, 27 June 1996.

to introduce national data protection legislation which corresponds at least to the standard of the 1981 **Council of Europe Convention on the Protection for Individuals with regard to the Automatic processing of Personal Data**.⁷⁸ Each Member State has to have a national protection authority to supervise data protection.⁷⁹ A joint supervisory authority has been set up in Strasbourg for the surveillance of the CSIS.

Technical, logistical and operational problems have arisen from the connections between the national systems and the CSIS in Strasbourg. One such problem was the inability of the central computer to accommodate the vast amount of detailed information that the German *Bundeskriminalamt* (BKA) wanted to download onto the SIS.⁸⁰

Article 94 specifies which data on an individual may be entered into the system: name and known aliases, identifying physical features, date and place of birth, sex, nationality, whether armed or violent, reason for the report and action to be taken. Information is held on people who must be refused entry into the Schengen space because they are regarded as a threat to public order, involved in criminal activities or who are unwanted immigrants. This includes:

- persons to be arrested with the aim of extraditing them - Article 95
- third country nationals to be refused entry- Article 96
- missing persons or persons who should be taken into custody -Article 97
- all stolen weapons, blank bank documents and cash- Article 100
- persons and vehicles for hidden registration -Article 99

Due to the restrictions on the data which may be stored in SIS, it was considered necessary to have other systems to store and exchange data among the Member States.⁸¹ Alongside SIS, the **European Information System (EIS), Eurodac,**

⁷⁸ Article 117 of the Schengen Convention.

⁷⁹ Article 114

⁸⁰ See Woltjer, A., p.266.

⁸¹ Article 126 Schengen Convention.

SIRENE⁸² and the **information system of EUROPOL** will operate. Access to SIS is primarily reserved for police and customs checks carried out within a Schengen State and the authorities responsible for border checks. One of the conditions which have to be met by a contracting party to the Schengen Agreement, apart from being a EU Member, is that the State must have implemented national legislation on data protection. This fact was one of the reasons for the delay in implementing the Convention in Italy.⁸³

The European Parliament has been critical of the development of these data exchange systems as no accessible checks have been implemented. There is much confusion pertaining to the number of systems in place, the implicit duplication of tasks and the accessibility of this information. Questions arise in connection with the data - what data is stored and how this is protected. As the systems stand at the moment there is no legal security for individuals whose data is entered into and stored on one of these systems. This is an area in which the European Parliament is pushing for greater redress and accountability.

4.8 The Executive Committee (Article 133)

The Executive Committee is composed of one member of each signatory State who is the Minister responsible for the implementation of the convention. It is the general task of the Executive Committee to supervise the correct application of the Convention. There is no parliamentary control over the Executive Committee, a fact the EP is particularly concerned about. The committee functions by unanimity. The President-in-office of the Schengen Executive Committee appears before the European Parliament twice per year which provides Members of the European Parliament with the opportunity to table questions on the functioning of Schengen.

⁸² Abbreviation for Supplementary Information Request at the National Entry.

⁸³ New laws on data protection presented by the Dini government were examined in one of the two Chambers which means that the whole procedure must start again under the Prodi government on account of the elections.

4.9 European Parliament Resolution of 20 June 1995 on free movement of persons within the Nordic Passport Union, the European Economic Area and the Schengen countries

In this Resolution the EP stresses that integrating the Nordic Passport Union in the Schengen area must not jeopardise giving the requisite Community dimension to the area covered by the Third Pillar (Annex 5). The Resolution reaffirms that as free movement of persons is one of the four freedoms in the EC Treaty, it must be governed in an EC framework with judicial review by the European Court of Justice and parliamentary control by the European Parliament. The EP deplors the present lack of parliamentary and judicial scrutiny of the mechanisms governing the freedom of movement of persons currently being implemented. Furthermore, the integration of the Nordic Passport Union into the Schengen area must not jeopardise giving the requisite Community dimension to the area covered by the Third Pillar and calls for this problem to be resolved in a democratic way and in compliance with Community law. Attention is drawn to the distortions which may arise and the consequences they may have on the treatment of legal residents moving within the Union, due to the progressive implementation by certain EU Member States of the Schengen Agreement and the co-operation between the Schengen signatories and the Nordic passport Union. The Council and Commission are called upon to make clear their views on the integration of the Schengen provisions into the Treaty on European Union without either opening the door to further distortions or endangering the existing agreement with the Nordic Passport Union.

5. Police Co-operation

5.1 Background to the establishment of EUROPOL

During the European Council meeting of June 1991 in Luxembourg, it was decided that a *European Criminal Investigation Office* should be created. Following this initiative Article K.1.9 was inserted into the Treaty on European Union providing the legal basis for a European Police Office (EUROPOL). On 26 July 1995 the representatives of the Member States signed a **Council Act drawing up the Convention on the establishing a European Police Office** (Annex 6) which has yet to be ratified in the Member States under the terms of Article K.3, Title VI of the TEU. EUROPOL's competence as regards crime set out in Article 2 shall cover both:

- (1) *illegal money-laundering activities in connection with these forms of crime or specific manifestations thereof; and*
- (2) *related criminal offences.*

Although EUROPOL is being set up without its own executive powers and is limited to functions of a central criminal investigation unit, it will nonetheless contribute to the fight against crime.⁸⁴ The underlying aim of the EUROPOL Convention is to improve the effectiveness of action and co-operation between the national bodies responsible for combating terrorism, drug trafficking, trafficking in radioactive materials, illegal immigration and other forms of serious international crime.

The British Government after months of debate finally agreed to a compromise settlement to remove the final obstacle to the ratification and implementation of the Convention. The cause of the disagreement concerned the settlement of those disputes, which remain unresolved after a six-month initial phase in the Council, to be submitted to the ECJ. The UK accepted the other fourteen Members' consensus to

⁸⁴ Second Report on EUROPOL, Committee on Civil Liberties and Internal Affairs, Rapporteur: Mr. Harmut Nassauer, 29 February 1996, A4-0061/96, PE 215.803/final.

submit the unresolved disputes to the Court of Justice.⁸⁵ The compromise consists of the addition to the Convention of a protocol signed by the Fifteen, enabling any State to refer a dispute to the ECJ. A Council Act was adopted by the Member States on 23 July 1996 drawing up, on the basis of Article K.3 of the TEU, the **Protocol on the interpretation, by way of preliminary rulings by the European Court of Justice of the European communities of the Convention on the establishment of a European Police Office**⁸⁶. (Annex 7)

5.2 Objectives of EUROPOL

Article 2 of the EUROPOL Convention defines the objectives of EUROPOL. Cooperation will take place within the existing framework between the Member States pursuant to Article K.1.(9) of the TEU to improve *'the effectiveness and co-operation of the competent authorities in the Member States⁸⁷ in preventing and combating terrorism, unlawful drug trafficking and other forms of international crime where there are factual indications that an organised criminal structure is involved and two or more Member States are affected by the forms of crime in question in such ways as to require a common approach by Member States owing to the scale, significance and consequences of the offences concerned'*.

It is intended that EUROPOL will progressively achieve these objectives. In the meantime, however, its initial objectives are to prevent and combat unlawful drug trafficking, trafficking in nuclear and radioactive substances, illegal immigrant smuggling, trade in human beings and motor vehicle crime.⁸⁸ The Council may in time instruct EUROPOL to deal with other serious forms of international crime in addition to those already provided for in Article 2(2) in compliance with EUROPOL's objectives. This includes crimes against life, limb or personal freedom, crimes against

⁸⁵ Agence Europe, No. 6755, 23 June 1996.

⁸⁶ OJ C 299, 9.10.1996, p.1-14.

⁸⁷ Competent authorities have been defined in Article 2.4 as all the public bodies existing in the Member States which are responsible under national law for preventing and combating criminal offences.

⁸⁸ Article 2.2 EUROPOL Convention.

property or public goods including fraud and crimes concerning illegal trading and harm to the environment.

5.3 Tasks of EUROPOL

The Convention entrusts EUROPOL with the following tasks:

- to facilitate information exchanges between the Member States;
- to obtain, collate and analyse information and intelligence;
- to notify the competent authorities in the Member States via the national units of information concerning them;
- to aid investigations in the Member States by sending relevant information to the national units; and
- to maintain a computerised system of collected information containing data.⁸⁹

5.4 Europol Drugs Unit

A Ministerial Agreement concluded on 2 June 1993 sets out the objectives of the European Drugs Unit (EDU) which derives from the task of the anticipated EUROPOL which will only come into effect once ratified by all the Member States. This Ministerial Agreement was superseded by a Joint Action on 10 March 1996.⁹⁰ (Annex 8) The organisation of the exchange of information on illicit drug trafficking and criminal organisations involved in and associated with money laundering activities affecting two or more Member States are the two specific tasks within the remit of the EDU which following a Council Decision of October 1993 is based in the Hague. Following the Essen summit meeting in December 1994, the EDU's remit was extended to include motor vehicle crime, crime connected with nuclear and radioactive substances, illegal immigration, smuggling and illegal money laundering.

⁸⁹ Article 3

⁹⁰ Joint action 95/73/JHA concerning the Europol Drugs Unit on the basis of Article K.3(2)(b) of the TEU, 10.03.95, OJ L 62, 20.03.1995.

Political agreement has been reached among the Member States on a Joint Action to extend the competence of the EDU to include trafficking in human beings.⁹¹ The EDU is to liaise with a national unit in each Member State and is bound by the legal situation of the seconding State. The EDU does not direct any operations itself. Its role is to provide support and assistance while the European Liaison Officers (ELO) act under the control of their national authorities.⁹² According to a statement by the Irish Presidency issued at the November 1996 JHA Council, the ratification process of the Europol Convention is expected to be finished by Summer 1997. The United Kingdom hopes to finish ratification procedures before the European Council in Dublin in December 1996.⁹³

5.5 Exchange of Information

According to the first annual report on the activities of the EDU for 1994, the exchange of information and intelligence, both personal and non-personal data by the ELO's is the primary activity of the EDU.⁹⁴ This was also the case for the year ended March 1995.⁹⁵ From the 1995 report, the nature of the requests can be classified as follows:

- 77% were specific questions in connection with sensitive investigations;
- 17% required special expertise concerning particular aspects of crime, and
- 6% led to support by ELO's for ongoing special law enforcement operations.

A further break down of the statistics in the 1995 Co-ordinators Report reveal that 76% of cases were drug related, 12% were money laundering activities, 4% concerned illegal immigration networks and 8% involved stolen vehicle trafficking.

⁹¹ This will be formally adopted at the JHA Council meeting in November 1996.

⁹² Report on the activities of the EUROPOL Drugs Unit between 1 January and 31 December 1994, First Year Progress Report, p.6, C4-0094/95.

⁹³ Council Press Release, 12104/96 (Presse 346 - G), 28/29 November 1996.

⁹⁴ Report on the activities of the EUROPOL Drugs Unit between 1 January and 31 December 1994, First Year Progress Report, p.4, C4-0094/95.

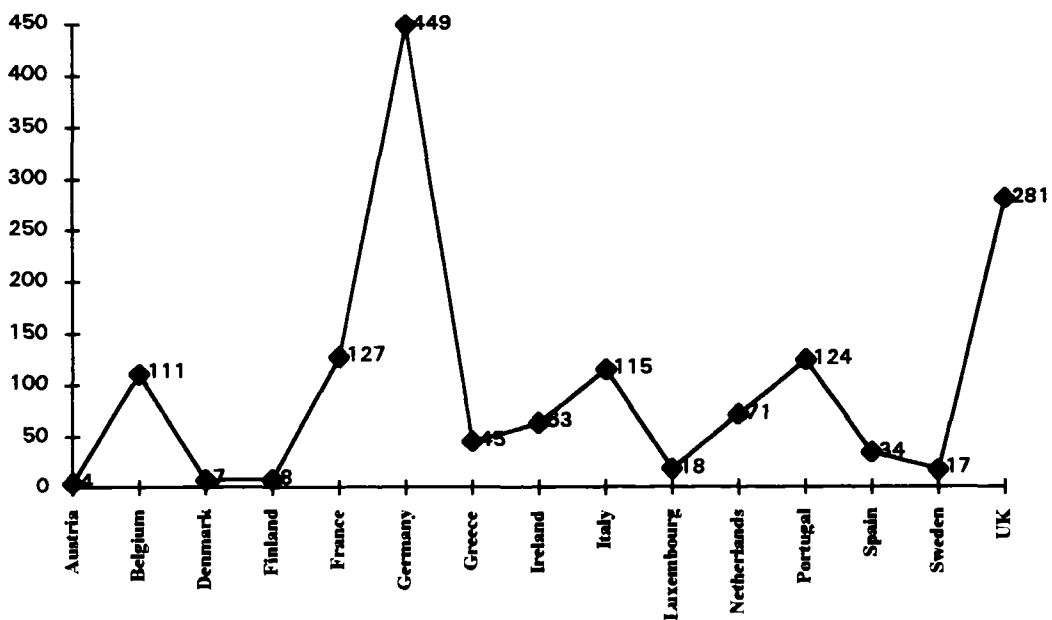
⁹⁵ EUROPOL Drugs Unit: Co-ordinators Report for 1995.

5.6 General Trends Observed in 1994

The number of requests received increased during 1995 due to a higher number of requests from a few countries: Germany made 449 requests (104 in 1994), the Belgians 111 (104 in 1994), the French 127 (22 in 1994) the UK 281 (62 in 1994), and Portugal 124 (22 in 1994) (see Graphs 1 and 2). According to the 1995/6 Co-ordinators Report there are differences in policy in the Member States with respect to the criteria for sending a request to the EDU. This situation needs to be examined and clearer guidelines given. The role of the EDU differs from one Member State to another. This is reflected in the number of requests received from the respective Member States.

Graph 1

Number of outgoing requests per Member State
(requests sent from each Member State to their liaison bureau) in 1995



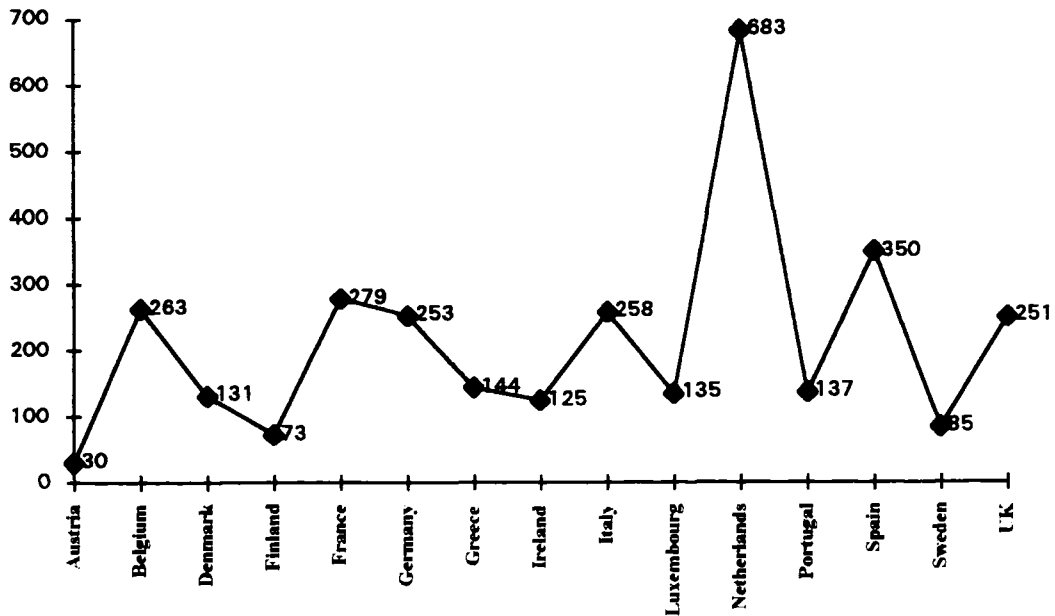
Source: EUROPOL Co-ordinator's Report 1995

The co-ordinators observed that despite the EDU's early involvement in ongoing operations, some Member States appeared hesitant about involving the EDU in their international law enforcement actions, preferring instead to take a more pragmatic

approach until the added value of the EDU had been proven. The following graphs give an indication of the levels of participation by the Member States.

Graph 2

Number of incoming requests per Member State
(requests sent in-house to other liaison bureau's) in 1995



Source: EUROPOL Co-ordinator's Report 1995

5.7 European Parliament's Resolution on EUROPOL⁹⁶

Several issues need to be addressed, however, before the national Parliaments ratify the Convention. On 14 March 1996, MEP's voted 213 to 44 with 32 abstentions in favour of a resolution expressing support for EUROPOL on the explicit understanding that there is a role for the ECJ in ruling on a dispute between a citizen and EUROPOL plus the fact that proper data protection safeguards are implemented (Annexes 8 & 9). Citizens should also have the right to address matters in this area to

⁹⁶ European Parliament Resolution on EUROPOL of 14 March 1996, A4-0061/96.

the Ombudsman. The Resolution calls on national Parliaments not to ratify the agreement until the role of the ECJ has been clarified. In general, MEP's are in favour of EUROPOL coming within the competence of the EU with a role for the EP in the appointment of Directors subject to the accountability before both the European and national parliaments. If these conditions are fulfilled, support is given to extending EUROPOL's powers to investigative matters.

Furthermore, the resolution calls on Member States to ensure that, when ratifying the Convention, laws are passed to ensure that personal data indicating religion, race or political beliefs which could threaten fundamental rights are not registered in EUROPOL's records. The EP fears that fundamental rights and freedoms could be seriously at risk from inadequate data protection and in the expectation that data protection rules (both for databases and files) will be set up prior to the entry into force of the Convention with a view to guaranteeing the right of self-determination in respect of information and that any amendments to the Convention that are needed as a result of future European data protection standards will be made.

6. Asylum and Immigration

European immigration policy is an issue which is of concern not only to the Union but also to its partners and demands a co-ordinated approach from the actors in this field.⁹⁷ Several fora exist for the discussion of migration issues within Europe, among them is the regular meeting of Immigration Ministers from the EU Member States in the Justice and Home Affairs Council, the K.4 Committee formerly the Ad Hoc Group Immigration⁹⁸, the Schengen Group of States, the Council of Europe, the Groups of Berlin and Vienna, OSCE and the intermittent public hearings organised by the Civil Liberties Committee of the European Parliament. Immigration has moved from being a matter of internal state sovereignty to a matter of concern at the European level.

Refugee movements are increasingly identified as the primary migratory challenge facing Europe.⁹⁹ In response to the increasing pressure witnessed by asylum systems, West European governments have introduced measures restricting potential asylum seekers access to their territory. Despite an ever growing number of refugees and displaced persons globally, asylum applications in West Europe have decreased significantly since 1992 as a consequence of restrictive national measures introduced by the Member States. 1993 marks a turning point in the pattern of asylum applications. There is a significant decrease in the number of asylum applications in the EU: 674,000 in 1992 to 517,000 in 1993.

The following factors influenced this reduction:

⁹⁷ See EP Resolution on European Immigration Policy of 15 July 1993, OJ C 255, 20.09.1993.

⁹⁸ The Ad Hoc Group Immigration was formed in 1986 and prepared the biannual meetings of the Immigration Ministers. In reply to Written Question no. 315/93, OJ C46/5, 1994, Commissioner Flynn on behalf of the Commission explained the Ad Hoc Group Immigration had five subgroups dealing with admission and expulsion, asylum, external frontiers, false documents and visas. The Commission did participate in several meetings but strictly speaking, no formal mechanism for co-operation with the community institutions was established.

⁹⁹ Sarah Collinson, p. 18.

- Legislation restricting asylum applications was introduced in most EU Member States.
- Lower recognition rates, shorter screening periods and cuts in entitlements for example housing benefits and the right to work also contributed to the reduction in asylum seekers.
- Safe country declarations further reduced the number of asylum seekers from those countries deemed to be safe, e.g. Germany's recognition of Nigeria as a safe country.

Germany as a result of a dramatic influx of refugees due to its previous liberal asylum laws hosted over 50% of asylum seekers arriving in Western Europe during the early 1990's. The number of asylum applications received in Europe has risen from 13,000 asylum applications in 1972 to 270,000 in 1995¹⁰⁰. Between 1990 and 1994 the asylum applications received by the EU 15 were as follows:

	1990	1991	1992	1993	1994
EU 15	403,496	514,428	674,056	516,710	305,259

Source: Eurostat, Statistics in focus, Population and Social Conditions, 1996, No.1

The 1995 figures show Germany remains by far the first host country with 127,000 seekers (47% of the total, compared with 60% registered in 1992 and 1993). This is followed by the UK (55,000), the Netherlands (29,258), France (20,170), Belgium (11,409), Sweden (9,046), Austria (5,920), Denmark (5,112), Spain (4,429), Italy (1,732) and Finland (854). It is interesting to note that in almost all countries the number of asylum seekers has dropped, except in the UK where there was an increase of 30% compared to 1994. There was an increase to a lesser extent in Austria.

¹⁰⁰ Eurostat, April 1996 on Asylum-seekers.

With regard to the countries of origin in 1995, 56,000 asylum seekers came from the former Yugoslavia, a decrease from the previous year, in contrast to Turkey where the applications actually increased to 32,533. The other main countries of origin were Iraq, Sri-Lanka, Rumania, Somalia, Iran and Pakistan. In practical terms, the extent to which countries grant asylum varies immensely within the EU with some Member States bearing a disproportionate number of asylum seekers.¹⁰¹

6.1 Restrictive Measures

As a consequence of an increased number of applications, stricter asylum and immigration regulations have been implemented by the Member States. This has encouraged an action/reaction effect in the EU since the tightening of restrictions in one state makes another more attractive for asylum applicants thereby forcing the second State to implement similar procedures to those Member States with stricter asylum application procedures. The Parliamentary Assembly of the Council of Europe drew attention to this fact and recommended that there should be a greater degree of reliance on pan-European co-operation and less on bilateral and multilateral agreements concluded by certain European States.¹⁰² This further underlines the need for a similar asylum policy in all the EU Member States. The abolition of border controls deepens the fear that internal migration and asylum seekers denied asylum in a first State will lead to multiple applications for asylum and an uncontrollable influx of illegal immigrants.

6.2 Asylum Policy and Immigration policy as Matters of Common Interest

Both asylum policy and immigration policy have been identified as areas of *common interest* in Article K.3 of the TEU. However, as Achermann correctly points out *common interest* is a concept more widely used in political theory rather than a

¹⁰¹ According to the 1992 data, the recognition rate was below 10% in the following countries; Belgium (8%), Germany (4.3%), UK (3.42%), Ireland (2.9%), Italy (4.8%), Spain (5.8%), Finland (0.88%), Sweden (5%), Norway (2.3%), Austria (9.7%) and Switzerland (4.5%). The recognition rate was higher in France and The Netherlands with rates of 27.95% and 14.15% respectively.

¹⁰² Council of Europe Recommendation 1236 (1994) of 12.05.1994 .

clearly identifiable legal term.¹⁰³ Nonetheless, one may conclude that the common interest involves a greater understanding of the situation in the other Member States and based on this, it is desirable for the Member States to work towards co-operation rather than displaying divergent or uncoordinated actions.

6.3 Convention determining the State responsible for examining applications for asylum lodged in one Member State - The Dublin Convention

It is only procedural aspects of asylum which are dealt with by this Convention, signed in Dublin on 15 June 1990. (Annex 10) Nonetheless, it should be seen in the context of a movement aiming towards substantive harmonisation of asylum policy among EU Members.

The fundamental principle of this Convention is that an application for asylum should be dealt with by one State responsible for the processing of the political asylum claim. In doing so, the phenomenon of 'refugees in orbit' will be curtailed. The term 'refugees in orbit' is used to describe the situation where refugees who are not accepted in one country (perhaps because of notion of 'safe third country') are sent back to a transit country which does not accept their status either and the refugees continue to make further applications for asylum to other countries.

The general rule employed by the Convention regarding the country of first asylum is based on the idea that if there is sufficient protection from the risk of *refoulement* in the country where an asylum seeker had stayed prior to entering the country in which the application for asylum was submitted, the country dealing with the application is entitled to send the individual back to the country of first asylum.

¹⁰³ Achermann, Alberto: *Asylum and Immigration Policies: From Co-operation to Harmonisation*, p.129.

6.4 Communication from the Commission to the Council and European Parliament on Immigration and Asylum Policies

This Communication of 23 February 1994¹⁰⁴ underlines the need for a European policy on asylum and immigration which not only harmonises restrictive asylum regulations but which also addresses the root causes of the problems. Asylum and immigration are examined together under three main areas:

- action on migration pressure;
- action on controlling migration flows; and
- action to strengthen integration policies for legal immigrants.

The communication outlines two differing aspects of asylum and immigration which should be taken into account; the EU internal policy and the EU external policy. The Commission argued that a policy to tackle the causes of migration must be integrated into the EU's external policies and that the various external policy instruments at the EU's disposal should be used to address the root causes of those pressures. Additionally, the Commission advocated further measures which were directly focused on relieving migratory pressure such as to take account of the specific nature of the migratory flows and the region in which they originate. Also, the communication notes that in order to realise this comprehensive approach to migration, it would *'require the involvement of the greater part of the external economic and development relations of the Union and its Member States'*¹⁰⁵

In practical terms this would require the relevant Directorates to have as its objective the priority of reducing migratory pressures when identifying their policies. An internal working party was established to facilitate the co-ordination of policy but no mechanism was implemented to ensure that the Directorates acted on these guidelines. Hence, policy proposals on root causes are developed within the Third Pillar but the policy instruments for tackling root causes are within the First and

¹⁰⁴ COM (94) 23 final, 23.02.1994.

¹⁰⁵ Commission of the European communities, 23 February 1994, Communication from the Commission to the Council and the European Parliament on Immigration and Asylum Policies. COM (94) 23 final, p.57.

Second Pillars with no mechanism to ensure that the migration consequences of policy options are taken into account.¹⁰⁶

6.5 European Parliament's Report on the Communication from the Commission to the Council and the European Parliament on immigration and asylum policies¹⁰⁷

The European Parliament's report on the Commission's Communication the on immigration and asylum policies notes the broad scope of the latter's proposals but is critical of the fact that no attention is paid to the organisation of the policy to be implemented nor to institutional aspects. According to the EP's report, these two aspects are of fundamental importance and another communication must be drafted on these two issues. A balanced approach is also considered necessary by the EP. It is neither desirable to call a complete halt to immigration nor to open the borders completely. A balance must be maintained between the interests of society and the interests of individual migrants.

On the institutional level the EP urges the Commission to play a more active role in this policy area and to use its right to propose legislation to bring about rapid harmonisation of aspects of this policy and calls in this connection for the development of Community criteria - which based on the Geneva Convention- is helpful in answering the question whether refugees must be granted permanent or temporary admission. On the question of offering temporary protection, the EP stresses that provisional admission must not be used to avoid offering permanent protection to refugees and asks the European Commission to draw up a draft proposal to include:

- the conditions for provisional admission;

¹⁰⁶ For a more detailed examination of this topic see Spencer, Sarah, *Tackling the root causes of forced migration: the role of the European Union*, ECAS conference paper presented in Brussels on 19 September 1996.

¹⁰⁷ European Parliament's Report on the Communication from the Commission to the Council and the European Parliament on immigration and asylum policies, COM (94) 0023 - C3-0107/94, 29 June 1995, Committee on Civil Liberties and Internal Affairs, Rapporteur: Mr. Wiebenga, PE 211.476/fin.

- the duration of admission; and
- the substance of admission.

The matter of democratic accountability is raised by the EP with regard to the recommendations, resolutions and other decisions of general application by the Council on immigration and asylum which were *'wrongfully excluded from parliamentary and judicial scrutiny and are therefore not acceptable as forms of Union legislation'*. Harmonisation of immigration and asylum policies without proper international judicial supervision is considered unacceptable by the EP and therefore calls for the European Court of Justice's jurisdiction to be extended to generally include matters falling within the sphere of Justice and Home Affairs. On the specific issue of asylum, the report considers that decisions of the Council of Ministers having implications for asylum seekers ought to comply with the 1951 Geneva Convention and the UNHCR handbook. The duration of the asylum procedure should not extend beyond three years according to the report. Specific attention is to be paid to particularly vulnerable groups of society i.e. victims of violence, children and women, unaccompanied asylum-seeking minors, victims of gender related oppression and women victims of sexual abuse.

The EP also urges the Commission to draft Union legislation concerning the granting of temporary protection to the very large numbers of displaced persons who, through no fault of their own, face great danger even though such persons are not refugees within the meaning of the Geneva Convention. Additionally, the Commission is urged by the EP to devise a European system for the local reception of asylum-seekers, displaced persons and refugees so that the responsibility for such reception is borne jointly and equitably by the Member States.

6.6 External Policy

In an attempt to address immigration and the plight of refugees, the Commission Communication identifies the root causes of migration pressure: economic disparities, demographic and environmental changes, human rights policies and political situations.

The Edinburgh European Council of December 1992 adopted a '**Declaration on Principles Governing External Aspects of Migration Policy**'. It included important elements for the reduction of migration pressure:

- preservation of peace and the termination of armed conflicts;
- full respect for human rights;
- the creation of democratic societies and adequate social conditions;
- a liberal trade policy which should improve economic conditions in the countries of emigration;
- the effective use or appropriate volume of development aid; and
- the co-ordination of action in foreign policy, economic co-operation and immigration and asylum policy by the Commission and the Member States.

6.7 European Parliament Resolution on the harmonisation within the European Community of asylum law and policies (A3-0337/92) OJ 21.12.1992

Of much concern to the EP is the situation where an asylum seeker on reaching a European country is hindered in gaining access to the asylum procedures. In its resolution of 18 November 1992, based on the report drafted by Mr. Cooney MEP, the EP called for asylum-seekers to have automatic and unfettered access to admission procedures and for visa policies and sanctions on airline carriers not to be an impediment to such access.¹⁰⁸ (Annex 11) This position was again reiterated by the EP in its resolution of 19 January 1994 on the general principles of a European refugee policy¹⁰⁹ and the 1995 resolution on the Communication from the Commission to the Council and the EP on immigration and asylum policies¹¹⁰

¹⁰⁸ Resolution A3-0337/92 of 18 November 1992.

¹⁰⁹ Resolution A3-0404/93 based on the report drafted by MEP Lambrias.

¹¹⁰ A4-0169/95, OJ C 269, 16.10.1995

6.8 European Parliament Resolution on European immigration policy (A3-0280/92) of 18 November 1992, OJ C 337 21.12.1992

This Resolution recognises that despite the official ban on immigration, the EC member States have *de facto* remained countries of immigration. (Annex 12) The EP stresses the need for Community-level harmonisation of immigration policy to ensure that nationals of third countries are protected by Community law. Asylum policy should be distinguished from other forms of migration in legal and policy terms according to the Resolution. Family reunification is accorded recognition as a right stemming from the right of residence in the Community;

The European Parliament,

Considers that asylum policy should be distinguished from other forms of migration in legal and policy terms;

The Resolution calls on the Commission 'to draw plans for a European Fund for Refugees and an emergency plan for the reception of refugees, evenly distributed throughout the Community'. Campaigns to inform people in countries of origin about the risks and problems inherent in illegal immigration are encouraged. The economic exploitation of migrants is condemned.

The European Parliament,

Considers that illegal employment could be discouraged both by means of penalties and by introducing employment contracts which take into account the specific needs of the economic sectors concerned, without prejudice to the fundamental social rights of the workers involved, and by abolishing all provisions which help turn legal immigrants into illegal immigrants.¹¹¹

Emphasis is placed on the need for co-ordination between migration policy, policy on international development aid, trade policy and economic and social co-operation with third countries on the part of the Community and its Member States. Areas of

¹¹¹ Paragraph 16 of Resolution.

specific relevance to the integration of immigrants are access to the labour market, vocational training and temporary employment status, areas in which the EP has called for Directives to be introduced. The EP resolution on immigration policy of 15.07.1993 also makes reference to these points.¹¹²

6.9 Visa Regulations

- **Council regulation (EC) No. 1683/95 of 29 May 1995 laying down a uniform format for visas, OJ L 164 of 14.07.1995. (Annex 13)**
- **Council Regulation (EC) No. 2317/95 of 25 September 1995 determining the third countries whose nationals must be in possession of visas when crossing the external borders of Member States, OJ L 234 3.10.1995. (Annex 14)**

The first regulation sets out the terms and conditions for a uniform format for visas to be issued to third country nationals entering the territory of a Member State for not more than three months in all and also for transit through the territory or airport transit zone of one Member State or several Member States.

The Council formally adopted on the basis of Article 100c of the Treaty, the second Regulation determining the third countries whose nationals must be in possession of a visa when crossing the external borders of the Member States.¹¹³ The drawing up of a common list determining the third countries whose nationals must be in possession of a visa when crossing the external borders of the Member States represents an important step towards the harmonisation of visa policy. Article 7a of the Treaty stipulates that the internal market shall comprise of an area without internal frontiers in which the free movement of persons is ensured. However, other aspects of the harmonisation of visa policy, including the conditions for the issue of visas are matters to be determined under Title VI of the TEU.

¹¹² OJ C 255, 20.09.1993.

¹¹³ For visa regulations see OJ L 164, 14. 07. 1995 and OJ L 234 3.10. 1995.

The Regulation deals with visas issued for an envisaged stay in one or more Member States for a maximum period of three months. Member States shall determine the visa requirements for nationals of third countries not on the common list as well as for stateless persons and recognised refugees.¹¹⁴

6.10 CIREA and CIREFI : *Centre d'Information de Réflexion et d'Echange en matière d'Asile* and the Centre for Information, Discussion and Exchange on the Crossing of Frontiers and Immigration

CIREA along with CIREFI stemmed from the Commission communication to the Council and EP on Immigration and Asylum policies. This led to the setting up of two 'clearing houses' - the Centre for Information, Discussion and Exchange on Asylum (CIREA), and the Centre for Information, Discussion and Exchange in the Crossing of Borders and Immigration (CIREFI).

CIREA is an informal forum without any executive powers for the exchange of information on asylum and refugees. It is composed of representatives of the Member States dealing with asylum issues in the Council by officers in charge of implementing policies on asylum and the Commission is fully associated with its work. Their mandates include exchanging data on the number of applications for admission, the numbers of persons admitted and the number of returnees. The collection of data has become a regular exercise and its compilation is done by means of a computerised system. This information, however, is as yet not always directly comparable'.¹¹⁵

Although CIREA was a logical follow-up to the **Dublin Convention** with regard to the exchange of information, there is little evidence to suggest a comprehensive harmonisation of third country appraisals. Different conditions apply to the categories of information dealt with by CIREA. The public can access legislation and rules on the right of asylum, court decisions, important policy documents and statistics. Other information, for example country reports will be decided upon on a case by case

¹¹⁴ Article 2.1 and 2.2.

¹¹⁵ COM (94) 0023 of 23 February 1994, paragraph 44.

basis.¹¹⁶ The European Parliament does not have direct access to either of these centres and is critical of the collection and storage of personal data in the absence of the necessary data provisions.

6.11 European Parliament's Resolution on the Centre for Information, Discussion and Exchange on the Crossing of Frontiers and Immigration (CIREFI)

CIREFI was designed as a basic instrument for controlling illegal immigration through the exchange of information on the crossing of frontiers and immigration. The Council failed to specify the legal basis of this conclusion.¹¹⁷ CIREFI consists of a Standing Conference of national experts with logistical support from the General Secretariat of the Council and the national central units of the Member States.

The European Parliament received a text on the conclusion from the Council on 14 December 1994 in which the tasks of CIREFI are outlined:

'Without prejudice to the other tasks in the Ministerial Decision of 30 November/1 December 1992, the specific tasks of CIREFI shall be to: collate, using standard forms to state, statistical information concerning

- a. legal immigration*
- b. illegal immigration and unlawful residence*
- c. facilitating of illegal immigration*
- d. use of falsified travel documents*
- e. measures taken by competent authorities,*

and draw up regular and occasional situation reports on this basis commenting on trends, developments and changes; analyse the information compiled, draw conclusions and, when appropriate, give advice; conduct exchanges of information on expulsion matters, particularly in respect of countries of destination, airports of departure or arrival, carriers, flight routes, fares,

¹¹⁶ For references of CIREA's reports see bibliography of Joly Danièle, *The Porous Dam: European Harmonisation on asylum in the Nineties*, *International Journal of Refugee Law*, Vol.16, No.2, 1994, p.173.

¹¹⁷ Council Press Release, 30 November 1992, 10518/92, (Presse 230).

reservation possibilities, conditions of carriage, escort requirements and charter possibilities as well as on problems in obtaining repatriation travel documents'.¹¹⁸

In its Resolution of 22 September 1995 on the draft Council conclusions on the organisation and development of CIREFI, the European Parliament was critical of the manner in which the centre was established.¹¹⁹ (Annex 15) The EP had received very little if any information on or from the centre. From the data made available to the EP it seemed that CIREFI would be chiefly engaged in combating illegal immigration and would in fact be duplicating the data on immigrants and asylum seekers collected by the European Communities' Statistical Office, International Organisation for Migration (IOM), UNHCR, Member States, the European Information System and the work which might be assigned to EUROPOL.¹²⁰

The resolution also called for further clarification on the obligations of the Member States; relations with other similar intergovernmental or Community bodies; the conditions and restrictions on communication of information and data by the Member States, the protection of information and data by the Member States, the practical arrangements for this purpose and the long term and immediate objectives of CIREFI. Furthermore, the resolution in an effort to increase the transparency of the Centre, called for the appointment of an observer from the EP and another from the Commission to attend CIREFI meetings.

6.12 Definition of the term 'Refugee' in Article 1 of the Geneva Convention

At the March 1996 JHA Council meeting an agreement was reached on the harmonised application of the definition of the term 'Refugee' in Article 1 of the Geneva Convention¹²¹. In fact, this was the first joint position adopted in the JHA fields since the TEU entered into force (Annex 16).

¹¹⁸ See report on CIREFI by Committee on Civil Liberties and Internal Affairs, Rapporteur Mrs. Hedy D'Ancona, 20 July 1995, A4-0186/95, PE 211.782 final.

¹¹⁹ Resolution A4-0186/95 in OJ C 269/204 of 16.10.95.

¹²⁰ *ibid.* paragraph 10.

¹²¹ Joint Position 96/196/JHA concerning harmonised application of the definition of the term 'refugee' in Article 1 of the Geneva Convention of 28 July 1951 relating to the Status of refugees,

The joint position concerns the harmonised implementation by the competent authorities of the Member States of the criteria defined in Article 1 of the Convention which those authorities take into account when considering asylum applications. It marks a significant step in the process of establishing an asylum and immigration policy common to all Member States.

Provisions are contained in the joint position on the recognition of refugee status, the principle of individual determination of refugee status, establishing the evidence for granting refugee status, the concept of persecution and its origins i.e. persecution by the State: legal, administrative and police measures, prosecution, persecution by third parties; civil war and other internal or generalised armed conflicts; grounds of persecution (race, religion, nationality, political opinions, social group); relocation within the country of origin; refugees '*sur place*'; conscientious objection, absence without leave and desertion; the cessation of refugee status and clauses excluding persons from protection under the Geneva Convention. The EP was not consulted on this text.

6.13 European Parliament's position on minimum guarantees¹²²

The Council Resolution of 20 June 1995 on minimum guarantees for asylum is an attempt among Member States to agree common procedural standards for dealing with asylum seekers under Article K.1 of the TEU. In its resolution of 14 November 1996, the European Parliament, although it welcomes initiatives in this direction, is concerned about the manner in which the resolution was adopted without consultation with the EP. This resolution and other Council decisions of a general effect in the field of asylum policy, in the opinion of the EP, are not entirely binding, because they are pseudo-legislation and quite wrongly removed from parliamentary scrutiny and checks by the Court, and hence unacceptable as forms of Union legislation¹²³. Secondly, the

adopted on the basis of Article K.3 of the Treaty on European Union, 4.03.1996, OJ L 63, 13.03.1996.

¹²² EP Report on the Council Resolution on minimum guarantees for asylum procedures, A4-0315/96, 10 October 1996, Committee on Civil Liberties and Internal Affairs, Rapporteur: Mrs. Hedy d'Ancona.

¹²³ Paragraph 4 of EP Resolution.

resolution is regarded to be of a contradictory nature.¹²⁴ While the resolution upholds the fundamental principles of international law governing asylum procedures, it at the same time allows exception to be made in certain situations. The EP deplores the lowering of protection offered to asylum seekers and calls for more genuine burden sharing rather than merely a shifting of the burden to other countries. The EP resolution welcomes the fact that women's needs are recognised for the first time but considers that the wording of the resolution leaves too much leeway for Member States to continue to take no action to support female asylum seekers.¹²⁵ Other points of criticism are lack of democratic accountability and harmonisation in accordance with the lowest common denominator.

- Lack of democratic accountability

The EP was not consulted by the Council on this Resolution which is at variance with Article K.6 of the TEU specifying that the EP is to be informed and consulted by the Council of all decisions falling under Title VI on Justice and Home Affairs of the TEU. The resolution also calls for an end to the closed nature of the activities of the K.4 Committee, the working parties reporting to that Committee and the CIREA and CIREFI co-ordinating centres.

- Harmonisation in accordance with the lowest common denominator

Member States have given priority to measures to cut back the number of applications for asylum. Instead of genuine harmonisation of policy and 'burden-sharing' there appears to be a policy of shifting the burden. Principles such as 'safe country of origin' and 'host third country' are measures adopted by States to reduce numbers and shift the responsibility to another State.

¹²⁴ The Committee of Civil Liberties and Internal Affairs have discussed this Resolution at a public hearing attended by experts in this field in September 1996. Ms. d'Ancona MEP is the EP Rapporteur on this resolution.

¹²⁵ Paragraph 25 of the EP resolution.

Substance of the Resolution

The Resolution lists fundamental principles but nonetheless permits exceptions in situations where these fundamental principles are of most importance. An example of this is evident in paragraph 24 of the Council Resolution. A Member State may lay down special procedures for asylum applications at the border in order to determine, prior to access to the asylum procedure whether the application is manifestly unfounded. No expulsion may be carried out in this period. In the case where an application is manifestly unfounded, the asylum seeker may be refused entry. An appeal will not have a suspensive effect and the Member State authorities may deport an asylum seeker. It is this scenario which contravenes the provisions of the Geneva Convention. The EP has called for the Council to engage in wider consultation with the EP and organisations working directly with asylum seekers prior to adopting measures which may contravene the fundamental principles of international law. (Annex 17)

7. Extradition and Terrorism

7.1 Extradition Conventions

Two Conventions pertaining to extradition have been drawn up on the basis of Article K.3 of the TEU since the ratification of the Maastricht Treaty.

- **Council Act of 10 March 1995 drawing up the Convention on simplified extradition procedures.** (Annex 18)
- **Council Act of 27 September 1996 drawing up the Convention relating to extradition between the Member States of the European Union.** (Annex 19)

The Council also adopted a conclusion on the improvement of extradition between the Member States on 23 November 1995.

These two conventions and conclusion are to supplement the existing provisions on extradition. Prior to this, extradition in the EU had been governed by the two Council of Europe Conventions; **European Convention on Extradition (1957)** and the **European Convention on the Suppression of Terrorism (1977)**. These Conventions state the conditions for extradition¹²⁶.

Reference is made in the 1977 **Convention on the Suppression of Terrorism** to a number of situations that are not considered to be political offences. Article 1(f) also specifies that an accomplice of a person who commits or attempts to commit such an offence shall not be regarded as a political offender. Offences involving an attack against the life of persons, hijacking, kidnapping and the use of bombs and firearms are *not* to be regarded as political offences. For the purposes of extradition, persons convicted of the above mentioned offences, may be extradited since these activities are not considered to be

¹²⁶ Article 3.1 of the 1957 Convention on Extradition states;

Extradition shall not be granted if the offence in respect of which it is requested is regarded by the requested Party as a political offence or as an offence connected with a political offence.

political offences¹²⁷. Article 13 of the 1977 Convention (exemption clause) allows Member States to specify at the time of ratification cases for which this Convention on the Suppression of Terrorism will not be applicable. Among others Belgium, Denmark, France, Germany and the Netherlands have availed of this possibility.

¹²⁷ The European Convention on the Suppression of Terrorism 1977 states:

Article 1

For the purposes of extradition between Contracting States, none of the following offences shall be regarded as a political offence or as an offence connected with a political offence or as an offence inspired by political motives:

- (e) an offence involving the use of a bomb, grenade, rocket, automatic firearm or letter or parcel bomb if this use endangers persons;*
- (f) an attempt to commit any of the foregoing offences or participation as an accomplice of a person who commits or attempts to commit such an offence.*

Article 13

1. Any State may, at the time of signature or when depositing its instruments of ratification, acceptance or approval, declare that it reserves the right to refuse extradition in respect of any offence mentioned in Article 1 which it considers to be a political offence, an offence connected with a political offence or an offence inspired by political motives, provided that it undertakes to take into due consideration, when evaluating the character of the offence, any particularly serious aspects of the offence, including:

- (a) that it created a collective danger to the life, physical integrity or liberty of persons; or*
- (b) that it affected persons foreign to the motives behind it; or*
- (c) that cruel or vicious means have been used in the commission of the offence.*

2. Any State may wholly or partly withdraw a reservation it has made in accordance with the foregoing paragraph by means of a declaration addressed to the Secretary General of the Council of Europe which shall become effective as from the date of its receipt.

3. A State which has made a reservation in accordance with paragraph 1 of this Article may not claim the application of Article 1 by any other State; it may, however, if its reservation is partial or conditional, claim the application of that article in so far as it has itself accepted it.

7.1.1 Council Act of 27 September 1996 drawing up the Convention relating to extradition between the Member States of the European Union

Articles K.1.6 and K.1.7 in Title VI of the Treaty on European Union allows for closer judicial co-operation in civil and criminal matters, including all aspects of extradition. In accordance with this Article and with direct reference to the **European Convention on Extradition** (1957) the Justice and Home Affairs Council drew up a **Convention on Simplified Extradition Procedures** between the Member States of the European Union in March 1995. This EU Convention does not alter the existing legal status of political offenders but merely simplifies the extradition process *subject to the consent of the involved persons*.

The **Council Act of 27 September 1996 drawing up the Convention relating to extradition between the Member States of the European Union** limits even further the possibilities by which extradition can be rejected for reasons of political offences. Article 2.1 states that any political offence or conspiracy and association to commit a political offence that under normal circumstances would lead to imprisonment of more than twelve months is extraditable. Again, Member States are able to make use of the exemption clause of Article 5.2. If a Member State decides to avail of this possibility, it can restrict extradition to the offences or conspiracies to commit such offences specifically stated already in the 1977 Convention on the Suppression of Terrorism Articles 1 and 2. Further exemption as presently established under the 1977 Convention as is the case of Belgium, Denmark, France, Germany and the Netherlands become invalid.

The negotiations to the convention had been blocked on two issues: incrimination for criminal conspiracy and the restrictions on extraditing Portuguese individuals.

The legal structures of some Member States do not recognise the offence of 'criminal conspiracy' applicable to crimes involving membership of criminal organisations and also to acts of terrorism. These States could therefore, refuse extradition requested by another Member State on this basis. Two alternatives were proposed; to introduce this as a criminal offence in countries where it does not exist, or to have derogation to the principle of double incrimination so that extradition may be made possible. France proposed a

compromise solution, agreed on by the other fourteen. A Member State presented with an extradition request should either give up the principle of dual incrimination or respond positively to the request if the individual to be extradited has;

- a) taken part in an offence committed by a group acting with a common goal,
- b) committed an offence punishable by at least one year in prison,
- c) not directly participated in the offence, but has made it possible.

Portugal does not have any provisions for life sentences, nor for life-long security measures which constitutionally prevented the extradition of an individual to a country which could impose such a measure. The compromise reached was within the framework of the Schengen Agreement which means the country requesting extradition may only condemn the individual to the maximum sentence possible under Portuguese law. Portuguese law does not have penalties exceeding twenty five years and could therefore not extradite criminals likely to be given a longer sentence elsewhere.

Article 2.2 on extraditable offences states;

Extradition may not be refused on the grounds that the law of the requested Member State does not provide for the same type of detention order as the law of the requesting Member State.

7.2 Terrorism

The European Union Member States have emphasised the importance of co-operation between the Member States on combating terrorism. The Council Conclusions of 25 September 1995 and the **La Gomera Declaration** (Annex 20) on terrorism adopted on 23 November 1995, express the Council's commitment to augment operational anti-terrorist measures. On a more international scale, the G7 heads of State, meeting in Lyon in June 1996, confirmed their resolve to step up measures in the fight against terrorism in a forty one point plan.

In the Council Resolution laying down the priorities for co-operation in the field of Justice and Home Affairs for the period from 1 July 1996 to 30 June 1998, three areas have been targeted in combating terrorism:

- (a) strengthening co-operation between the Member States;
- (b) updating the document on the terrorist threat; and
- (c) drawing up a list of counter-terrorist centres of excellence.

7.3 Directory of powers in the anti-terrorist struggle

Formal agreement was reached in October 1996 on a 'joint action' for the creation of a directory for the purpose of facilitating co-operation between the Member States.¹²⁸ In practice, this would mean that each State sets out its powers and its specialised knowledge or experience in specific aspects of terrorism. National contact points would also be put in place. The joint action provides for the United Kingdom - which proposed the project - to be responsible for implementing the instrument for an initial one year starting period, to be then succeeded by the Member State holding the presidency.

¹²⁸ OJ L 273, 25 October 1996

8. Legal Co-operation : Criminal and Civil Matters

8.1 Criminal Matters

8.1.1 Judicial Co-operation

On 22 April 1996 a joint action was adopted by the Council on the basis of Article K.3 of the Treaty of the European Union concerning a framework for the exchange of liaison magistrates to improve judicial co-operation between the Member States¹²⁹. The main aim of this joint action is to create a framework for the exchange of liaison magistrates in order to increase the speed and effectiveness of judicial co-operation and to promote the pooling of information on the legal and judicial systems of the Member States and to improve their operation. (Annex 21) Additionally, two programmes to be funded through the Title VI budget are **Sherlock** (a programme to fight false papers) and **Grotius** (a programme for the training of judges).

8.1.2 Protection of the European Communities' Financial Interests

The European Parliament has been making efforts within the remit of its powers to combat the prevalence of fraud against the Community budget.¹³⁰ Parliament adopted a Resolution on 9 September 1996 on the European Commission's Work Programme on the fight against fraud for 1996 which recognised that an effective and

¹²⁹ 96/277/JHA in OJ L 105/1 of 27.04.1996

¹³⁰ Reference should be made in this context to *inter alia* to earlier EP Resolutions:

Resolution of 24 October 1991 on the legal protection of the Community's financial interests, OJ C 305, 25.11.1991, p.106;

Resolution of 11 March 1994 on the independent power of investigation and inquiry which the Union may exercise for the purpose of legal protection of its financial interests, OJ C 89, 10.04.1995, p.82;

Resolution of 15 March 1995 on the proposal for a Council of the Union Act establishing a Convention for the protection of the Communities' financial interests of the European communities on the basis of Article K.3 of the Treaty on European Union, OJ C 89, 10.04.1995, p.82; and

Resolution of 19 September 1996 on follow-up measures to the interparliamentary conference on combating fraud against the Community budget.

credibly implemented campaign against fraud is a factor that contributes to the acceptance of the European Union by its citizens. (Annex 22) As part of the anti-fraud strategy adopted in 1994, the Commission presented a proposal for a Council Act establishing a Convention relating to the criminal-law aspects of the protection of the Communities' financial interests, on the basis of Article K.3.2. Parliament recommended an approach based on the First Pillar for measures aimed at protecting the Community budget. While the Commission did not disagree, it preferred for the sake of expediency and for reasons connected with the scope of the proposed measures, to use the intergovernmental procedures associated with Title VI.¹³¹ Given the scale of fraud against the Community budget which in 1995 amounted to ECU 1146m, the EP regard the present measures as insufficient to combat fraud against the Community budget in the long term.¹³²

The Convention pursuant to Article K.3 of the Treaty on European Union on the protection of the European Communities' financial interests (Annex 23) was signed by the representatives of the Member States on 26 July 1996¹³³. This was supplemented by a Council Regulation on 18 December 1995 (Annex 24)¹³⁴. The Convention contains a common definition of fraud affecting the European Communities' financial interests, and aims to align the criminal law provisions of the Member States more closely with each other in order to combat fraud more effectively and to improve mutual judicial assistance¹³⁵.

Progress has been made in detecting irregularities, in part through the restructuring in 1995 of the Commission's Unit for the Co-ordination of Fraud

¹³¹ Protecting the Community's Financial Interests, The Fight Against Fraud Annual Report 1995. COM (96) 173 final, 8.05.1996, p.13.

¹³² Report on the draft second Protocol, pursuant to Article K.3 of the Treaty on European Union, to the Convention on the protection of the European Communities' Financial Interests (7752/96 - C4-0137/96 - 95/0360 (CNS)), Committee on Civil Liberties and Internal Affairs, Rapporteur: Mr. Rinaldo Bontempi, A4-0313/96, PE 218.453/fin.

¹³³ OJ C 316, 27.11.1995, p.48

¹³⁴ OJ L 312, 23.12.1995, p.1

¹³⁵ See also EP Report of the Committee of Civil Liberties and Internal Security on combating corruption in Europe, Rapporteur: Mrs. Heinke Salisch, 1 December 1995, A4-0314/95, PE 214.142 final.

Prevention (UCLAF). It is however the Member States which administer some 80% of Community funds. For this reason, the EP believes that it is primarily the Member States which must be called upon to improve their investigative resources in tackling fraud against the Community budget.

The following draft Council acts are currently under consideration with the aim of improving the Commission's opportunities to carry out checks on the spot and to empower and encourage the Member States to comply with their obligations under Article 209a of the Treaty on European Union in a more effective manner:

- Draft second protocol drawn up on the basis of Article K.3 of the Treaty on European Union to supplement the Convention on the Protection of the European Communities' financial interests (officials and members). The EP delivered its opinion on this proposal on 24 September 1996¹³⁶.

One of the amendments adopted by the EP expressed that the Second Protocol is to include *'the liability of legal persons and money laundering*'. An EP amendment to Article 2(1) specifies that *'legal persons can be held liable under criminal or administrative law for fraud and corruption which is committed on their account and behalf by any person having de facto or de jure power to take decision or to exercise control within the legal person*'. For the purposes of this Convention a *'legal person'* shall mean any entity having such status under the applicable national law, except for States or other public bodies in the exercise of State authority and for public international organisations, *and any economically active enterprise in which independent rights and obligations are vested*'. (EP amendments underlined) (Annex 25)

- Proposal for a Council Regulation (EC, Euratom) on on-the-spot checks and examination by the Commission to protect the financial interests of the European Communities against fraud and other irregularities. The EP delivered its opinion on the Commission's proposals on 22 May 1996 and was consulted a second time by the

¹³⁶ The EP Report on the Draft Second Protocol proposal was drawn up by Mr. Bontempi, A4-0313/96.

Council because of changes to the text. The European Parliament approved the Council draft (Consultation procedure-Reconsultation) on 24.18.1996¹³⁷. (Annex 26)

These proposals are somewhat confusing particularly since there is considerable duplication. The EP has repeatedly been critical of this lack of clarity especially regarding the responsibility for fraud as to whether it comes within the competence of the Community in the First Pillar or within the Third Pillar. From the viewpoint of the EP, legislation on the protecting the financial interests of the European Communities should be adopted within the Community framework. The EP would prefer communautarization as Member States are reluctant in taking action against fraudulent activities. As the Council has adopted the Convention on a legal instrument based on Title VI of the Treaty on European Union, the EP has accepted to continue discussion on the basis of the approach which has been adopted.

8.1.3 Trafficking in women and children and the fight against the sexual abuse of children

These are two issues high on the political agenda of the EU. The Declaration adopted at the first World Congress against the sexual abuse of children for commercial purposes stressed the need for further national actions and the need to support further international co-operation.

Three Commission initiatives have been detailed in the framework of fighting sexual exploitation of women and children although they have not been finalised at the time of writing.

- a) Communication to the Council and European Parliament on the results and recommendations of the international conference hosted by the Commission in June 1996 in Vienna on the trade and sexual exploitation of women. The Communication is to address the social, legal and immigration aspects as well as preventative measures of trafficking in human beings.

¹³⁷ Ms. Theato was the Rapporteur of this report, A4-0288/96.

- b) Measures against sexual tourism notably in Central Asian and Latin American countries.
- c) Proposal for actions aimed at preventing and child pornography networks from using the new technologies of the information society such as the Internet.

Political agreement was reached at the November 1996 JHA Council on a Joint Action on the extension of the mandate of Europol's Drug Unit to fight trafficking in human beings.¹³⁸

At the same Council meeting a Joint action on an incentive and exchange programme for persons involved in fighting paedophilia and traffic in human beings was adopted.

The European Parliament following an emergency debate on 18 September 1996, adopted a Resolution on paedophilia and sexual abuse of children. (Annex 27) The Resolution calls for development within Europol of a unit to combat paedophile networks and to set up a European office for the co-ordination of various private organisations active in searching for missing children. The EP has also called for support in the fight against trade in children and has made practical efforts in this direction through the annual budget.

8.2 Action to combat Racism and Xenophobia

Actions to combat racism and xenophobia have played an important role for the EP. It is an area in which the EP has been very active and has adopted many resolutions. The European Parliament's position on these issues is stated in one of the more recent Resolutions on racism, xenophobia and anti-Semitism of 26 October 1995¹³⁹ calling on the governments of the Member States to:

¹³⁸ This proposal is expected to be formally adopted by the Council after legal and linguistic finalization of the text.

¹³⁹ OJ C 308, 20.11.1995, p.140-142.

- ratify all international instruments concerning the fight against all forms of racial discrimination,
- guarantee the protection of persons against any form of discrimination on grounds of race, colour, religion or national or ethnic origin,
- promote equal opportunities for groups of persons who are most vulnerable to discrimination, particularly women, young people and children. (Annex 28)

Parliament approved on 8 May 1996 the proposal to designate 1997 as 'European Year against Racism'. The EP also passed a resolution on the Commission's strategy for tackling racism. This endorses the Commission's call for inserting a general anti-discrimination clause into the TEU. The EP called on the Member States to make naturalisation easier for immigrants and to extend the right to vote to immigrants in addition to facilitating the granting of citizenship to legally resident third country nationals¹⁴⁰.

8.3 Civil Matters

8.3.1 Extension of the Brussels Convention

The **Draft Convention on jurisdiction and the enforcement of judgements in matrimonial matters** has been held up for a number of years by substantive issues. This Convention would extend the scope of the Brussels Convention to include aspects of family law.

The three main issues of disagreement are:

- Article 1

The scope of the Convention, whether or not the exercise of parental authority and the custody of children should be included in the scope of the Convention (the La Haye Convention is one of the main instruments for the protection of Minors);

¹⁴⁰ See Committee on Civil Liberties and Internal Affairs Report on I. The Communication from the Commission on racism, xenophobia and anti-Semitism; and II. The proposal for a Council decision designating 1997 as European Year against Racism. Rapporteur: Mr. Arie Oostlander. A4-0135/96, PE 217.123/final, 26 April 1996, OJ C 152, 27.05.1996.

- Article 2
Jurisdiction in applications for a marriage to be declared invalid, divorce or the legal separation of spouses; and
- Article 3
Criteria for jurisdiction regarding the exercise of parental authority at the time the marriage is dissolved.

The Irish Presidency in the second half of 1996 has been entrusted with finding a consensus among the Fifteen on this Convention.

8.3.2 Draft Convention on the Service of Judicial Documents

This proposal for a Convention aims at simplifying and accelerating the procedure for transmission of judicial and extrajudicial documents between the Member States. Transmission is presently governed by the November 1965 Convention of the Hague which is based on a model founded on the transmission between central authorities designated by each of the Member States, normally the Ministries of Justice and Home Affairs.

The JHA Council agreed in March 1996 to adopt a two-stage procedure with regard to this Convention: the first involves the creation of a direct, faster system of transmission between the designated authorities in the respective Member States; and during the second stage the outstanding questions governed by the Hague Convention would be examined. No formal conclusion on this Convention was reached at the November 1996 JHA Council.

9. The Third Pillar: Still Early Days?

In their submissions to the 1996 Intergovernmental Conference, the European Parliament, Commission and Council recognised the lack of progress in the Third Pillar. The Reflection Group's Report commented on freedom and internal security:

'The Union is an area of free movement for people, goods, capital and services. Yet peoples' security is not sufficiently protected on a European scale: while protection remains essentially a national matter, crime is effectively organised on an international scale. Experience of the implementation of the Maastricht Treaty over the last few years shows that opportunities for effective European action are still very limited. Hence, the urgency for a common response at European level, following a pragmatic approach.'

The Reflection Group concludes that *'the key to success has to be found in a combination of political will and more effective use of existing intergovernmental arrangements'*.

One joint position on the definition of the term 'Refugee' has so far been adopted and few joint actions have been adopted. Following a lengthy bargaining procedure, agreement was finally reached on the role of the European Court of Justice in the EUROPOL Convention and the terms for the Convention on Extradition. The Council has demonstrated time and time again its preference for non-binding recommendations, resolutions and conclusions.

Why has there been such a lack of progress in the Third Pillar? Several factors contribute towards explaining the situation to date. Firstly, there was a reluctance of Member States to have Justice and Home affairs included in the Treaty structure. The compromise reached was to have these areas included as 'areas of common interest' rather than common policy areas within the integrated political and legal system of the EC. Furthermore, the structure chosen, similar to that of the Second Pillar of co-operation in areas of Common Foreign and Security Policy, could not simply be superimposed on the plethora of the existing intergovernmental groups which tended to be set up on an *ad hoc* basis. Transparency and accountability were phenomenon unfamiliar to their working

practices. The Maastricht Treaty structure codified and to a certain extent reformed the practices of these groups instead of addressing democratic and judicial control.

The provisions inherent in Title VI go some way towards underlining that the Community dimension is not considered on equal footing. The limitations on the Commission's right of initiative and the granting of the right of initiative to all Member States diminished the role of the Commission and European Parliament. Although Article K.9 provides for certain areas to be transferred from the Third Pillar to the First Pillar, this procedure is cumbersome and requires unanimity in the Council and ratification by all Member States in accordance with their respective constitutional requirements. Despite the constraints on the Community dimension, the European Parliament can exert its powers to increase accountability and transparency within the EU.

Budget

The European Parliament is responsible for monitoring the use of Community funds. In its capacity of budgetary authority, Parliament discharges this institutional responsibility thereby enhancing the democratic legitimacy within the EU. It is primarily through the work of the Committee on Budgetary Control that Parliament closely follows all matters relating to the fight against fraud and the protection of the Community's financial interests, taking specific initiatives in these areas whenever it sees fit.

In addition to its normal activity of questioning the European institutions and monitoring the budget, Parliament also exercised the new power of inquiry conferred on it by the Treaty on European Union using it for the first time in connection with the fight against fraud and the Community transit procedures.

Article K.8 provides that administrative expenditure relating to the Third Pillar is charged to the EC budget. Operational expenditure may be charged to the Community budget on a unanimous Council decision. In the case of the Third Pillar, Article 148.3 whereby abstentions do not prevent adoption by unanimity, does not apply. The result of this has been that in 1994 and 1995, budgetary appropriations have been unused in the Community budget. This would have given the EP scrutiny and budgetary powers, despite the fact that it is outside Community.

Transparency

A lack of transparency is the leitmotif of criticism by the EP with reference to the manner in which decisions are taken in the Third Pillar. The 'pseudo-legislation' adopted by the Council disregards the provisions of Article K.6 which obliges the Presidency of the Council to consult the EP on the principal aspects of activities in the areas covered in Title VI and to ensure that the views of the EP are duly taken into consideration. A more democratic decision-making process is certainly desirable although whether this will be the outcome of the IGC remains to be seen.

1996 Intergovernmental Conference (IGC) on the review of the Maastricht Treaty

Communitarization of certain aspects currently under the Third Pillar is on the agenda for the 1996 IGC. The Irish Presidency's 'suggested approach' of September 1996 focuses on firstly, the objectives and secondly, the scope of co-operation in JHA.

- **Objectives**

As a means to clarify the objectives of the EU in the Third Pillar, the Irish Presidency has suggested the redrafting of the fourth indent of Article B to stipulate that JHA co-operation has as its goal to develop the Union as an 'area of freedom, security, justice and the rule of law' rather than the present 'close co-operation'. Article K.1 would include this addition as well as that of 'strengthening judicial co-operation and the fight against crime'.

- **Scope**

The scope of co-operation in matters of JHA could be redefined by reformulating Article K the list of issues of 'common interest', without prejudice as to whether they should fall under Title VI or the First Pillar. The Irish Presidency also suggests adding the 'fight against corruption' to that of fraud. Also, racism and xenophobia are to be included as an eleventh point.

Danger of paralysis

In the Resolution of 23 October 1996 on the Dublin I European Council, the EP stressed that provision must be made for closer co-operation mechanisms so as to enable some Member States to advance towards a Union and avoid the danger of paralysis. Any increased co-operation under the various pillars must be achieved with due regard for the institutional framework, the *acquis communautaire* and the objectives of the Union. Moreover, the EU must be open to all Members at any time. The new Treaty must contain institutional provisions concerning decision-making procedures which will make it possible to avoid the risk of paralysis or even a veto, to permit progress in European integration, with all guarantees of respect for the institutional framework and the *acquis communautaire* which has so far been established. The EP reiterates its stance on the IGC by calling for provisions to be incorporated into the treaty which will make it possible to establish genuine internal security and freedom within Europe so that it is possible to combat international crime successfully, particularly by Communitarizing policies on asylum, immigration, visas, anti-terrorism measures, organised crime, drugs, fraud, corruption and trafficking in women and children.

Although progress in the Third Pillar had been fragmented and in many cases on the basis of the lowest common denominator, significant steps have nonetheless been taken in this the youngest of the three pillars. Through the work of the Directorate General (H) at the Secretariat General of the Council and the Commission Task Force, information exchanges between the national ministries has been greatly assisted. Progress in the Third Pillar has been limited, confined primarily to harmonisation of procedure without any major harmonisation of fundamental national legislation.

Annexes

Listed according to Chapter

Chapter 2

1. Title VI of the Treaty on European Union. Co-operation in the fields of Justice and Home Affairs.

Chapter 3

2. European Parliament Resolution on a Proposal for a Council directive concerning the right of third country nationals to travel within the Community (COM (95) 346 final).
3. European Parliament Resolution on a Proposal for a Council directive concerning the abolition of controls on persons at internal frontiers (COM (95) 347 final).
4. European Parliament Resolution on a Proposal for a European parliament and Council Directive amending Directive 68/360/EEC on the abolition of restrictions on movement and residence within the Community for workers of Member States and their families and Directive 73/148/EEC on the abolition of restrictions on movement and residence within the Community for nationals of Member States with regard to establish and the provision of services (COM (95) 348 final).

Chapter 4

5. European Parliament Resolution of 20 June 1995 on free movement of persons within the Nordic Passport Union, the European Economic Area and the Schengen countries.

Chapter 5

6. Council Act drawing up the Convention on the establishing a European Police Office.
7. Protocol on the interpretation, by way of preliminary rulings by the European Court of Justice of the European communities of the Convention on the establishment of a European Police Office.
8. European Parliament Resolution on EUROPOL.
9. European Parliament Resolution on EUROPOL.

Chapter 6

10. Convention determining the State responsible for examining applications for asylum lodged in one Member State - The Dublin Convention.
11. European Parliament Resolution on the harmonisation within the European Community of asylum law and policies (A3-0337/92) OJ 21.12.1992.
12. European Parliament Resolution on European immigration and asylum policy (A3-0280/92) of 18 November 1992. OJ C 337 21.12.1992.
13. Council regulation (EC) No. 1683/95 of 29 May 1995 laying down a uniform format for visas, OJ L 164 of 14.07.1995.
14. Council Regulation (EC) No. 2317/95 of 25 September 1995 determining the third countries whose nationals must be in possession of visas when crossing the external borders of Member States. OJ L 234 3.10.1995.
15. European Parliament's Resolution on the Centre for Information, Discussion and Exchange on the Crossing of Frontiers and Immigration (CIREFI).
16. Definition of the term 'Refugee' in Article 1 of the Geneva Convention.
17. European Parliament's position on minimum guarantees.

Chapter 7

18. Council Act of 10 March 1995 drawing up the Convention on simplified extradition procedures.
19. Council Act of 27 September 1996 drawing up the Convention relating to extradition between the Member States of the European Union.
20. La Gomera Declaration.

Chapter 8

21. Joint action adopted by the Council on the basis of Article K.3 of the Treaty of the European Union concerning a framework for the exchange of liaison magistrates to improve judicial co-operation between the Member States.

22. EP Resolution of 9 September 1996 on the European Commission's Work Programme on the fight against fraud for 1996.
23. Convention pursuant to Article K.3 of the Treaty on European Union on the protection of the European Communities' financial interests.
24. Council Regulation of 18 December 1995 on the protection of the European Communities' financial interests.
25. EP Resolution on a Draft second protocol drawn up on the basis of Article K.3 of the Treaty on European Union to supplement the Convention on the Protection of the European Communities' financial interests (officials and members).
26. EP Resolution on a Proposal for a Council Regulation (EC, Euratom) on on-the-spot checks and examination by the Commission to protect the financial interests of the European Communities against fraud and other irregularities.
27. Resolution on exploitation of children.
28. European Parliament adopted a Resolution on racism, xenophobia and anti-Semitism on 26 October 1995.

Supplementary Annexes

29. EP Resolution of 20 January 1996 on Participation by Parliament in international agreements in the fields of Justice and Home Affairs.
30. EP Resolution of 14 December 1996 on the progress made in 1995 in the implementation of co-operation in the fields of Justice and Home Affairs pursuant to Title VI of the Treaty on European Union.
31. EP Resolution of 15 June 1996 on the communication from the Commission to the Council and the European Parliament on a European Union action plan to combat drugs (1995 to 1999) (COM (94) 0234-C4-0107/94).
32. EP Resolution of 18 January 1996 on trafficking in human beings.

Council Decision of 23 November 1995 on publication in the Official Journal of the European Communities of acts adopted by the Council under Title VI of the Treaty on European Union as published in OJ C 274, 19.09.1996. The following annexes appear in this Official Journal.

33. Council Decision of 23 November 1995 on publication in the Official Journal of the European Communities of acts adopted by the Council in the field of asylum and immigration.
34. Council resolution of 20 June 1994 on limitations of third country nationals to the territory of the Member States for employment.
35. Council resolution of 20 June 1994 on limitations of third country nationals to the territory of the Member States for the purposes of pursuing activities of self-employed persons.
36. Council resolution of 20 June 1994 on limitations of third country nationals to the territory of the Member States for study purposes.
37. Council resolution of 20 June 1995 on minimum guarantees for asylum procedures.
38. Council recommendation of 30 November 1994 concerning the adoption of a standard travel document for the expulsion of third country nationals.
39. Council recommendation of 30 November 1994 concerning a specimen bilateral readmission agreement between a Member State and a third country.
40. Council recommendation of 24 July 1995 on the guiding principles to be followed in drawing up protocols on the implementation of readmission agreements.
41. Council conclusions of 20 June 1994 concerning the possible application of Article K.9 of the Treaty on European Union to asylum policy.
42. Means of proof in the framework of the Dublin Convention.
43. Form of a laissez-passer for the transfer of an asylum applicant from one Member State to another.
44. Circulation and confidentiality of joint reports on the situation in certain third countries.
45. Standard form for determining the State responsible for examining an application for asylum policies.
46. Council conclusions of 20 June 1994 on the Commission communication on immigration and asylum policies.

47. Council conclusions of 30 November 1994 on the organisation and development of the Centre for Information, Discussion and Exchange on the Crossing of Frontiers and Immigration (Cirefi).
 48. Guidelines for joint reports on third countries.
 49. Second activity report on the Centre for Information, Discussion and Exchange on Asylum (Cirea).
 50. Honorary consuls already empowered to issue visas who as a traditional measure will be allowed to issue uniform visas.
-
51. Council Resolution of 14 October 1996 laying down priorities for co-operation in the field of justice and home affairs for the period from 1 July 1996 to 30 June 1998. (OJ C 319, 26.10.1996)
 52. Council Resolution of 17 January 1995 on the lawful interception of telecommunications.
(OJ 329, 4.11.1996)
 53. Joint action of 28 October 1996 adopted by the Council on the basis of Article K.3 of the Treaty on European Union, on a programme of incentives and exchanges for legal practitioners (Grotius).
(OJ L287, 8.11.1996)
 54. Joint action of 28 October 1996 adopted by the Council on the basis of Article K.3 of the TEU introducing a programme of training, exchanges and co-operation in the field of identity documents (Sherlock). (OJ L287, 8.11.1996)

Annex

Chapter 2

Annex 1

TITLE VI

PROVISIONS ON COOPERATION IN THE FIELDS OF JUSTICE AND HOME AFFAIRS

Article K

Cooperation in the fields of justice and home affairs shall be governed by the following provisions.

Article K.1

For the purposes of achieving the objectives of the Union, in particular the free movement of persons, and without prejudice to the powers of the European Community, Member States shall regard the following areas as matters of common interest:

1. asylum policy;
2. rules governing the crossing by persons of the external borders of the Member States and the exercise of controls thereon;
3. immigration policy and policy regarding nationals of third countries:
 - (a) conditions of entry and movement by nationals of third countries on the territory of Member States;
 - (b) conditions of residence by nationals of third countries on the territory of Member States, including family reunion and access to employment;
 - (c) combatting unauthorized immigration, residence and work by nationals of third countries on the territory of Member States;
4. combatting drug addiction in so far as this is not covered by 7 to 9;
5. combatting fraud on an international scale in so far as this is not covered by 7 to 9;
6. judicial cooperation in civil matters;
7. judicial cooperation in criminal matters;
8. customs cooperation;
9. police cooperation for the purposes of preventing and combatting terrorism, unlawful drug trafficking and other serious forms of international crime, including if necessary certain aspects of customs cooperation, in connection with the organization of a Union-wide

system for exchanging information within a European Police Office (Europol).

Article K.2

1. The matters referred to in Article K.1 shall be dealt with in compliance with the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 and the Convention relating to the Status of Refugees of 28 July 1951 and having regard to the protection afforded by Member States to persons persecuted on political grounds.

2. This Title shall not affect the exercise of the responsibilities incumbent upon Member States with regard to the maintenance of law and order and the safeguarding of internal security.

Article K.3

1. In the areas referred to in Article K.1, Member States shall inform and consult one another within the Council with a view to coordinating their action. To that end, they shall establish collaboration between the relevant departments of their administrations.

2. The Council may:

- on the initiative of any Member State or of the Commission, in the areas referred to in Article K.1(1) to (6);
- on the initiative of any Member State, in the areas referred to in Article K.1(7) to (9):
 - (a) adopt joint positions and promote, using the appropriate form and procedures, any cooperation contributing to the pursuit of the objectives of the Union;
 - (b) adopt joint action in so far as the objectives of the Union can be attained better by joint action than by the Member States acting individually on account of the scale or effects of the action envisaged; it may decide that measures implementing joint action are to be adopted by a qualified majority;
 - (c) without prejudice to Article 220 of the Treaty establishing the European Community, draw up conventions which it shall recommend to the Member States for adoption in accordance with their respective constitutional requirements.

Unless otherwise provided by such conventions, measures implementing them shall be adopted within the Council by a majority of two-thirds of the High Contracting Parties.

Such conventions may stipulate that the Court of Justice shall have jurisdiction to interpret their provisions and to rule on any disputes regarding their application, in accordance with such arrangements as they may lay down.

Article K.4

1. A Coordinating Committee shall be set up consisting of senior officials. In addition to its coordinating role, it shall be the task of the Committee to:

- give opinions for the attention of the Council, either at the Council's request or on its own initiative;
- contribute, without prejudice to Article 151 of the Treaty establishing the European Community, to the preparation of the Council's discussions in the areas referred to in Article K.1 and, in accordance with the conditions laid down in Article 100d of the Treaty establishing the European Community, in the areas referred to in Article 100c of that Treaty.

2. The Commission shall be fully associated with the work in the areas referred to in this Title.

3. The Council shall act unanimously, except on matters of procedure and in cases where Article K.3 expressly provides for other voting rules.

Where the Council is required to act by a qualified majority, the votes of its members shall be weighted as laid down in Article 148(2) of the Treaty establishing the European Community, and for their adoption, acts of the Council shall require at least fifty-four votes in favour, cast by at least eight members.

Article K.5

Within international organizations and at international conferences in which they take part, Member States shall defend the common positions adopted under the provisions of this Title.

Article K.6

The Presidency and the Commission shall regularly inform the European Parliament of discussions in the areas covered by this Title.

Annex 1

The Presidency shall consult the European Parliament on the principal aspects of activities in the areas referred to in this Title and shall ensure that the views of the European Parliament are duly taken into consideration.

The European Parliament may ask questions of the Council or make recommendations to it. Each year, it shall hold a debate on the progress made in implementation of the areas referred to in this Title.

Article K.7

The provisions of this Title shall not prevent the establishment or development of closer cooperation between two or more Member States in so far as such cooperation does not conflict with, or impede, that provided for in this Title.

Article K.8

1. The provisions referred to in Articles 137, 138, 139 to 142, 146, 147, 150 to 153, 157 to 163 and 217 of the Treaty establishing the European Community shall apply to the provisions relating to the areas referred to in this Title.

2. Administrative expenditure which the provisions relating to the areas referred to in this Title entail for the institutions shall be charged to the budget of the European Communities.

The Council may also:

- either decide unanimously that operational expenditure to which the implementation of those provisions gives rise is to be charged to the budget of the European Communities; in that event, the budgetary procedure laid down in the Treaty establishing the European Community shall be applicable;
- or determine that such expenditure shall be charged to the Member States, where appropriate in accordance with a scale to be decided.

Article K.9

The Council, acting unanimously on the initiative of the Commission or a Member State, may decide to apply Article 100c of the Treaty establishing the European Community to action in areas referred to in Article K.1(1) to (6), and at the same time determine the relevant voting conditions relating to it. It shall recommend the Member States to adopt that decision in accordance with their respective constitutional requirements.

Annexes

Chapter 3

Proposal for a Council Directive on the right of third-country nationals to travel in the Community (COM(95)0346 - C4-0420/95 - 95/0199(CNS))

The proposal was approved with the following amendments:

Text proposed by the Commission¹

Amendments by Parliament

(Amendment 1)
Recital -1 (new)

Whereas Article 3 of the Treaty provides for an internal market characterized, inter alia, by the abolition, as between Member States, of obstacles to the free movement of persons and measures concerning the entry and movement of persons in the internal market;

(Amendment 2)
Recital 1

Whereas Article 7a of the Treaty provides for the establishment of an internal market, which is to comprise an area without internal frontiers in which the free movement of goods, persons, capital and services is ensured in accordance with the provisions of the Treaty;

Whereas Article 7a of the Treaty provided for the establishment by 31 December 1992 of an internal market, to comprise an area without internal frontiers in which the free movement of goods, persons, capital and services is ensured in accordance with the provisions of the Treaty;

(Amendment 21)
Recital 1a (new)

Whereas it follows from Article 7a that in addition to the abolition of controls at the internal frontiers a number of Community measures need to be taken, as was the case with three other freedoms, in order to create effective freedom of movement of persons;

(Amendment 3)
Recital 1b (new)

Whereas the free movement of persons is laid down by the Treaty and hence cannot be made dependent on accompanying measures;

¹ OJ C 306, 17.11.1995, p. 5.

Whereas this Directive must be implemented as rapidly as possible, and whereas all measures under Title VI of the EU Treaty which are designed to regulate the right of travel of the same categories of persons as those referred to in this Directive must be halted as regards both measures already laid down and negotiations concerning measures not yet taken;

(Amendment 4)
Recital 2

Whereas in order to achieve this objective Member States will have to allow third-country nationals who are lawfully resident in the territory of another Member State to enter their territories for short stays; whereas if there were no such right to travel each Member State would have to consider the fact that there were people in other Member States who were not entitled to enter its territory, which might be an argument for maintaining controls at internal frontiers;

Whereas in order to achieve this objective Member States will have to allow third-country nationals who are lawfully resident in the territory of another Member State to enter their territories for short stays; whereas if there were no such right to travel each Member State would have to consider the fact that there were people coming from other Member States who were not entitled to enter its territory; whereas this would not constitute an internal market without internal frontiers;

(Amendment 5)
Recital 3a (new)

Whereas in principle the registration of third-country nationals exercising their right to travel should not be subject to more stringent requirements than those applying in comparable situations to EU citizens;

(Amendment 6)
Recital 3b (new)

Whereas, for the purposes of determining the duration in the definition of 'stay for a short time' or 'short stay', the same time restrictions as those applying to EU citizens must be applied;

(Amendment 7)
Recital 4

Whereas the issue of a residence permit by a Member State to a third-country national, whereby the latter is authorized to live in that State, is an act surrounded by sufficient safeguards for the other Member States no longer to need to subject the person concerned to the requirement that he obtain a visa in advance from their own authorities and hence for them to grant him the right to travel; whereas, in any event, each Member State may expel the person concerned to the Member State which issued the residence permit, which is obliged to readmit him, if he stays unlawfully in its territory, if he does not fulfil the conditions governing the right to travel, or if he represents a threat to public order or public security in that State, or to its international relations;

Whereas the issue of a residence permit by a Member State to a third-country national, whereby the latter is authorized to live in that State, is an act surrounded by sufficient safeguards for the other Member States no longer to need to subject the person concerned to the requirement that he obtain a visa in advance from their own authorities and hence for them to grant him the right to travel; whereas, in any event, each Member State may expel the person concerned to the Member State which issued the residence permit, which is obliged to readmit him, if he stays unlawfully in its territory, if he does not fulfil the conditions governing the right to travel, or if he represents a threat to public order or public security;

(Amendment 8)
Recital 5

Whereas, where a third-country national who is not resident in the Community is in possession of a visa issued by a Member State which permits him to cross the external frontiers of all the Member States by virtue of its being valid throughout the Community and mutually recognized by the Member States for that purpose, each Member State enjoys sufficient safeguards for it to grant the person concerned the right to travel; whereas the same right must a fortiori be granted to third-country nationals who may cross the external frontiers without being subject to a visa requirement; whereas, in any event, each Member State is entitled to expel a third-country national if he does not fulfil the conditions governing the right to travel or if he represents a threat to public order or public security in that State, or to its international relations;

Whereas, where a third-country national who is not resident in the Community is in possession of a visa issued by a Member State which permits him to cross the external frontiers of all the Member States by virtue of its being valid throughout the Community and mutually recognized by the Member States for that purpose, each Member State enjoys sufficient safeguards for it to grant the person concerned the right to travel; whereas the same right must a fortiori be granted to third-country nationals who may cross the external frontiers without being subject to a visa requirement; whereas, in any event, each Member State is entitled to expel a third-country national if he does not fulfil the conditions governing the right to travel or if he represents a threat to public order or public security;

Introductory provision

1. Whereas Article 7a of the Treaty provides for the establishment of an internal market, which is to comprise an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured in accordance with the provision of the Treaty;

2. Whereas in order to achieve this objective Member States will have to allow third-country nationals who are lawfully in the territory of another Member State to enter their territories for short stays; whereas if there were no such right to travel each Member State would have to consider the fact that there were people in other Member States who were not entitled to enter its territory, which might be an argument for maintaining controls at internal frontiers;

3. This Directive shall not affect provisions of Community or domestic law on

- stays other than for a short time, and
- access to employment and the taking-up of activities as a self-employed person

applicable to third-country nationals.

1. Whereas Article 7a of the Treaty provides for the establishment of an internal market, which is to comprise an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured in accordance with the provision of the Treaty;

2. Whereas in order to achieve this objective Member States will have to allow third-country nationals who are lawfully in the territory of another Member State to enter their territories for short stays; whereas if there were no such right to travel each Member State would have to consider the fact that there were people in other Member States who were not entitled to enter its territory, which might be an argument for maintaining controls at internal frontiers;

3. This Directive shall not affect provisions of Community or domestic law on

- stays other than for a short time, and
- access to employment, the taking-up of activities as a self-employed person and other lucrative or non-lucrative activities

applicable to third-country nationals.

(Amendment 10)
Article 2, heading (new), and (1) (2) and (3)

Definitions

For the purpose of this Directive:

1. 'right to travel' means the right to cross internal Community borders and to remain in the territory of a Member State for a short stay, or to travel onward, without the person concerned being required to obtain a visa from the Member State or States in whose territory the right is exercised.

For the purpose of this Directive:

1. 'right to travel' means the right to cross internal Community borders and to remain in the territory of a Member State for a short stay, or to travel onward, without the person concerned being required to obtain a visa from the Member State or States in whose territory the right is exercised.

2. 'residence permit' means any document or authorization issued by the authorities in a Member State which permits a person to reside in that Member State, and which appears on the list referred to in Article 3(4);
3. 'visa within the meaning of point (3) of Article 2' means a visa which is valid throughout the Community and which is mutually recognized for the purpose of crossing the external frontiers of the Member States.

2. 'residence permit' means any document or authorization issued by the authorities in a Member State which permits a person to reside in that Member State for a period of more than six months;
3. 'visa' means a visa as specified in Regulations (EC) Nos. 1683/95¹ and 2317/95².

¹ OJ L 164, 14.7.1995, p. 1.
² OJ L 234, 3.10.1995, p. 1.

(Amendment 11)
Article 2(4a) (new)

4a. 'stay for a short time' means a stay of not more than six months.

(Amendment 12 and separate vote)
Article 3(1) to (3)

Right to travel for holders of a residence permit

1. Member States shall grant the right to travel to third-country nationals who hold a valid residence permit issued by another Member State.

1. Member States shall grant the right to travel to third-country nationals who hold a valid residence permit issued by another Member State.

Any such person may travel in the territories of the other Member States for a continuous period of not more than three months provided he meets the following requirements:

Any such person may travel in the territories of the other Member States for a continuous period of not more than three months provided he is in possession of a valid residence permit and a valid travel document.

- he must be in possession of a valid residence permit and a valid travel document;

- he must have sufficient means of subsistence, both to cover the period of the intended stay or transit and to enable him to return to the Member State which issued the residence permit, or to travel to a third country into which he is certain to be admitted.

2. Member States shall, in accordance with the conditions laid down in the Annex, readmit any person to whom they have issued a residence permit and who is unlawfully resident in the territory of another Member State, even if the validity of that permit has expired.

Deleted

3. A third-country national who holds a residence permit issued by a Member State and who is exercising the right to travel may be expelled if he does not meet the requirements laid down in paragraph 1 or if he represents a threat to public order or public security in the Member State in which he is exercising the right to travel, or to its international relations.

3. A third-country national who holds a residence permit issued by a Member State and who is exercising the right to travel may be expelled if he does not meet the requirements laid down in paragraph 1 or if he represents a threat to public order or public security where he is exercising the right to travel.

(Amendment 13)
Article 4

Right to travel for holders of a visa and persons exempt from visa requirements

1. Member States shall grant the right to travel to third-country nationals who hold a visa within the meaning of point (3) of Article 2.

1. Member States shall grant the right to travel to third-country nationals who hold a visa within the meaning of point (3) of Article 2.

Such persons may travel in the territories of the Member States during the period of stay permitted by the visa, provided that they are in possession of a travel document bearing the valid visa and meet the requirement laid down in the second indent of Article 3(1).

Such persons may travel in the territories of the Member States during the period of stay permitted by the visa, provided that they are in possession of a travel document bearing the valid visa.

2. Member States shall confer the right to travel on third country nationals who are exempted from visa requirements by all the Member States.

2. Member States shall confer the right to travel on third country nationals who are exempted from visa requirements by all the Member States.

Such persons may travel in the territories of the Member States for a total of no more than three months within a period of six months from the date of first entry in the territory of one of the Member States, provided that they are in possession of valid travel documents and meet the requirement laid down in the second indent of Article 3(1).

Such persons may travel in the territories of the Member States for a total of no more than three months within a period of six months from the date of first entry in the territory of one of the Member States, provided that they are in possession of valid travel documents.

3. Paragraph 2 shall also apply to third-country nationals who are subject to a visa requirement in a number of Member States.

Deleted

However, the right to travel shall in their case be restricted to the territories of such Member States as have exempted nationals of the relevant third country from the obligation to hold a visa, unless they do hold a visa within the meaning of point (3) of Article 2.

In the latter event, the period of stay in the territories of the Member States which require a visa shall be limited to the period permitted by the visa.

4. The provisions of this Article shall not prevent any Member State from authorizing the stay in its territory of a third-country national beyond three months.

5. A third-country national allowed to enter the Community for a short stay who is exercising the right to travel may be expelled if he does not satisfy the conditions in paragraphs 1 or 2, according to whether or not he is subject to a visa requirement, or if he represents a threat to public order or public security in the Member State in which he is exercising the right to travel, or to its international relations.

4. The provisions of this Article shall not prevent any Member State from authorizing the stay in its territory of a third-country national beyond three months.

5. A third-country national allowed to enter the Community for a short stay who is exercising the right to travel may be expelled if he does not satisfy the conditions in paragraphs 1 or 2, according to whether or not he is subject to a visa requirement, or if he represents a threat to public order or public security in the Member State in which he is exercising the right to travel.

(Amendment 14)
Article 5

Registration

Member States may require persons exercising the right to travel to report their presence in their territories.

1. Member States may require persons exercising the right to travel to report their presence in their territories.

2. In no circumstances may persons entitled to travel be required to register if they stay in the Member State concerned for less than one month and do not reside at a fixed address during this period.

3. However, the Member State may oblige entitled persons to register with the person providing accommodation if the latter offers accommodation on a commercial basis to a number of persons simultaneously.

(Amendment 15)
Article 5a (new)

Article 5a

End of stay

1. Persons in a Member State on the basis of the right to travel granted in this Directive should leave the Member State's territory without delay if they no longer satisfy the applicable requirements.

2. If the fact that the applicable requirements will no longer be satisfied is predictable, they should leave the Member State before they cease to satisfy those requirements.

(Amendment 16)
Article 5b (new)

Article 5b

Readmission

1. Without prejudice to the option open to them of taking legal action in the event of unlawful stays by third-country nationals exercising the right to travel, Member States shall readmit, in accordance with the procedure defined in the annex, persons to whom they issued

(a) the last known residence permit

(b) the most recent valid visa.

2. The persons referred to in paragraph 1 may be expelled against their will and at their expense in accordance with the procedure defined in the annex.

(Amendment 17)
ANNEX, title

Conditions for the readmission by the Member States of third-country nationals who are unlawfully resident in a Member State but who hold a residence permit for another Member State (Article 3(2) of the Directive)

The readmission by the Member States, on the basis of Article 5b of the Directive, of third-country nationals who are unlawfully resident in another Member State

(Amendment 18)
ANNEX (-1) (new)

-1. Member States undertake to adhere strictly to the provisions of the European Convention on the Protection of Human Rights and Fundamental Freedoms and not to expel to another Member State persons who should be afforded protection in their State on the basis of this Convention.

(Amendment 19)
ANNEX (3), second, third and fourth subparagraphs

If the person holds a valid residence permit for another Member State, the Member State which has issued the permit is required to readmit him.

If the person holds a residence permit issued by another Member State, the Member State which has issued the permit is required to readmit him.

Moreover, Member States must readmit a third-country national in accordance with Article 3(2) within a period of up to two months after the expiration of the validity of the residence permit.

The obligation to readmit him is subject to the condition that a request for readmitting him shall be lodged within one month by the authorities becoming aware of the person's unlawful presence in the Member State.

Moreover, Member States must readmit a third-country national in accordance with Article 5b within a period of up to two months after the expiration of the validity of the residence permit.

The obligation to readmit him is subject to the condition that a request for readmitting him shall be lodged by the authorities becoming aware of the person's unlawful presence in the Member State within one month of establishing this fact.

(Amendment 20)
ANNEX (5a) (new)

5a. The above procedure also applies, under the same conditions, in cases where a visa has expired.

Legislative resolution embodying Parliament's opinion on the proposal for a Council Directive on the right of third-country nationals to travel in the Community (COM(95)0346 - C4-0420/95 - 95/0199(CNS))

(Consultation procedure)

The European Parliament,

- having regard to the Council proposal, COM(95)0346 - 95/0199(CNS)¹,
 - having been consulted by the Council pursuant to Article 100 of the EC Treaty (C4-0420/95),
 - having regard to Rule 58 of its Rules of Procedure,
 - having regard to the report of the Committee on Civil Liberties and Internal Affairs and the opinions of the Committee on Social Affairs and Employment and the Committee on Legal Affairs and Citizens' Rights (A4-0218/96),
1. Approves the Commission proposal, subject to Parliament's amendments;
 2. Calls on the Commission to amend its proposal accordingly, pursuant to Article 189a(2) of the EC Treaty;
 3. Asks to be consulted again should the Council intend to make substantial modifications to the Commission proposal;
 4. Instructs its President to forward this opinion to the Council and Commission.

¹ OJ C 306, 17.11.1995, p. 5.

6(b) A4-0219/96

Proposal for a Council Directive on the elimination of controls on persons crossing internal frontiers (COM(95)0347 - C4-0468/95 - 95/0201(CNS))

The proposal was approved with the following amendments:

Text proposed by the Commission¹

Amendments by Parliament

(Amendment 1)
Recital -1 (new)

Whereas Article 3 of the Treaty provides for an internal market characterized, inter alia, by the abolition, as between Member States, of obstacles to the free movement of persons and measures concerning the entry and movement of persons in the internal market;

(Amendment 2)
Recital 1

Whereas Article 7a of the Treaty provides for the establishment of the internal market, which is to comprise an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured in accordance with the provisions of the Treaty;

Whereas Article 7a of the Treaty provided for the establishment, by 31 December 1992, of the internal market, to comprise an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured in accordance with the provisions of the Treaty;

(Amendment 3)
Recital 3

Whereas the Community and the Member States have decided to take the measures they deem essential for eliminating the underlying reasons for the application of frontier controls and formalities under national law;

Deleted

(Amendment 4)
Recital 4

Whereas the relevant accompanying measures have been introduced satisfactorily;

Whereas the free movement of persons is laid down by the Treaty and hence cannot be made dependent on accompanying measures;

¹ OJ C 289, 31.10.1995, p. 16.

(Amendment 11)
Recital 7a (new)

Whereas no distinction may be made or discrimination shown between beneficiaries of the right of free movement of persons, whether they are citizens of the Union or legal residents;

(Amendment 10)
Article 2(1)

1. A Member State may, in the event of a serious threat to public policy, or public security, reinstate controls at its frontiers within the Community for a period of not more than thirty days. Any Member State taking such action shall immediately notify the Commission and the other Member States, supplying them with all the appropriate information.

1. A Member State may, in the event of a real serious threat to public policy or public security, reinstate controls at its frontiers within the Community for a period of not more than thirty days. Any Member State taking such action shall immediately notify the Commission, the European Parliament and the other Member States, supplying them with all the appropriate information.

(Amendment 6)
Article 3(2) and (3)

2. 'intra-Community flight' means the movement of an aircraft between two Community airports, without any stopovers, and which does not start from or end at a non-Community airport;

2. 'intra-Community flight' means the movement of an aircraft between two Community airports, without any stopovers outside the Community, and which does not start from or end at a non-Community airport;

3. 'intra-Community sea crossing' means the movement between two Community ports, without any intermediate calls, of a vessel plying regularly between two or more specified Community ports;

3. 'intra-Community sea crossing' means the movement between two Community ports, without any intermediate calls outside the Community, of a vessel plying regularly between two or more specified Community ports;

(Amendment 7)
Article 4

No later than two years after implementation of this Directive, and every three years thereafter, the Commission shall report on its application to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions.

No later than one year after implementation of this Directive, and every two years thereafter, the Commission shall report on its application to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions.

(Amendment 13)
Article 5, first paragraph

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive not later than 31 December 1996. They shall immediately inform the Commission thereof and shall also transmit to it a table showing the correlation between each of the provisions of this Directive and the relevant provisions of national law, irrespective of whether these predate this Directive or are approved for the specific purpose of transposing it.

In order to meet the requirement set out in Articles 3 and 7a of the Treaty, Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive as rapidly as possible after their adoption at national level and not later than 31 December 1996. They shall immediately inform the Commission thereof and shall also transmit to it a table showing the correlation between each of the provisions of this Directive and the relevant provisions of national law, irrespective of whether these predate this Directive or are approved for the specific purpose of transposing it.

Legislative resolution embodying Parliament's opinion on the proposal for a Council Directive on the elimination of controls on persons crossing internal frontiers (COM(95)0347 - C4-0468/95 - 95/0201(CNS))

(Consultation procedure)

The European Parliament,

- having regard to the Commission proposal, COM(95)0347 - 95/0201(CNS)¹,
 - having been consulted by the Council pursuant to Article 100 of the EC Treaty (C4-0468/95),
 - having regard to Rule 58 of the Rules of Procedure,
 - having regard to the report of the Committee on Civil Liberties and Internal Affairs and the opinions of the Committee on Social Affairs and Employment and the Committee on Legal Affairs and Citizens' Rights (A4-0219/96),
1. Approves the Commission proposal subject to Parliament's amendments;
 2. Calls on the Commission to amend its proposal accordingly, pursuant to Article 189a(2) of the EC Treaty;
 3. Asks to be consulted again should the Council intend to make substantial modifications to the Commission proposal;
 4. Instructs its President to forward this opinion to the Council and Commission.

¹ OJ C 289, 31.10.1995, p. 16.

6. Movement and residence for nationals of Member States - Controls on persons crossing internal frontiers - Right of third-country nationals to travel in the Community ***I/**

(a) A4-0095/96

Proposal for a European Parliament and Council Directive amending Directive 68/360/EEC on the abolition of restrictions on movement and residence within the Community for workers of Member States and their families and Directive 73/148/EEC on the abolition of restrictions on movement and residence within the Community for nationals of Member States with regard to establishment and the provision of services (COM(95)0348 - C4-0357/95 - 95/0202(COD))

The proposal was approved with the following amendments:

Text proposed by the Commission¹

Amendments by Parliament

(Amendment 1)

ARTICLE 1(3)

Article 3(3) (Directives 68/360/EEC and 73/148/EEC)

3. The following paragraph 3 is added to Article 3: Deleted

'3. Member States may require the persons referred to in Article 1 to be in possession of a valid identity card or passport, if necessary bearing a visa, when they exercise their right of free movement.'

(Amendment 2)

ARTICLE 1(3a) (new)

Article 3(3a) (new) (Directives 68/360/EEC and 73/148/EEC)

3a. The following paragraph 3a is added to Article 3:

'3a. The provisions of this Directive must be interpreted as meaning that family members are granted the same rights, whether they are citizens of the Union or citizens of a third country.'

¹ OJ C 307, 18.11.1995, p. 18.

Legislative resolution embodying Parliament's opinion on the proposal for a European Parliament and Council Directive amending Directive 68/360/EEC on the abolition of restrictions on movement and residence within the Community for workers of Member States and their families and Directive 73/148/EEC on the abolition of restrictions on movement and residence within the Community for nationals of Member States with regard to establishment and the provision of services (COM(95)0348 - C4-0357/95 - 95/0202(COD))

(Codecision procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council, COM(95)0348 - 95/0202(COD)¹,
 - having regard to Article 189b(2) of the EC Treaty and Articles 49, 54(2) and 63(2) of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C4-0357/95),
 - having regard to Rule 58 of its Rules of Procedure,
 - having regard to the report of the Committee on Legal Affairs and Citizens' Rights and the opinions of the Committee on Social Affairs and Employment and the Committee on Civil Liberties and Internal Affairs (A4-0095/96),
1. Approves the Commission proposal, subject to Parliament's amendments;
 2. Calls on the Commission to alter its proposal accordingly, pursuant to Article 189a(2) of the EC Treaty;
 3. Calls on the Council to incorporate Parliament's amendments in the common position that it adopts in accordance with Article 189b(2) of the EC Treaty;
 4. Should the Council intend to depart from the text approved by Parliament, calls on the Council to notify Parliament and requests that the conciliation procedure be initiated;
 5. Points out that the Commission is required to submit to Parliament any modification it may intend to make to its proposal as amended by Parliament;
 6. Instructs its President to forward this opinion to the Council and Commission.

¹ OJ C 307, 18.11.1995, p. 18.

Annexes

Chapter 4

1. Nordic Passport Union, EEA and Schengen Convention - Visby summit

(a) B4-0728, 0754 and 0761/96

Resolution on free movement of persons within the Nordic Passport Union, the European Economic Area and the Schengen countries

The European Parliament,

- having regard to the 1954 Ministerial Agreement establishing a Nordic Passport Union, the 1986 Single European Act, and the 1990 Schengen Convention,
 - having regard to Article 7a of the EC Treaty,
 - having regard to the agreement on the European Economic Area, in force since 1994, which provides for the free movement of persons,
 - having regard to the final communiqué of the Schengen Executive Committee meeting in The Hague on 18 April 1996,
 - having regard to the first ministerial meeting of the Schengen member states and the member states of the Nordic Passport Union in The Hague on 18 April 1996,
- A. whereas the EC Treaty objective of achieving free movement of persons by 1993 has not been met and whereas there is at present no prospect of agreement thereon in the Council,
- B. whereas it is important both to maintain the integrity of the Nordic Passport Union and to consolidate the Schengen area,
- C. whereas in its resolution of 13 March 1996 embodying (i) Parliament's opinion on the convening of the Intergovernmental Conference, and (ii) an evaluation of the work of the Reflection Group and definition of the political priorities of the European Parliament with a view to the Intergovernmental Conference¹, Parliament expressly called for a Community dimension to the external aspects of policy on justice and home affairs (visa, asylum and immigration policy, external borders, drug trafficking, fraud and judicial cooperation in civil matters) for greater recourse to Community procedures in respect of police cooperation and cooperation in criminal matters; whereas Parliament also expressly called for codecision to 'be extended to all legislation. Legislation should be dealt with by a qualified majority in the Council',
- D. whereas the Commission has submitted three draft directives with a view to marking a fresh stage in implementation of freedom of movement of persons,
- E. concerned that, given that not all EU Member States seem to intend to become full parties to the Schengen Agreement, internal obstacles to the free movement of persons may continue to exist within the Union,
- F. whereas the Commission takes part in all meetings of the Schengen Executive Committee,
- G. whereas the interparliamentary Schengen conference of 8 and 9 December 1995 took the initiative in creating a framework of cooperation between the national parliaments of the countries of the Schengen area, pending the introduction of efficient controls in a Union context,

¹ OJ C 96, 1.4.1996, p. 77.

1. Points out that the Treaty on European Union requires full implementation of free movement of persons and therefore urges the Council and the Commission to take the necessary steps to implement the relevant articles of the Treaty and adopt the relevant legislation; calls on the Council to take a decision as soon as possible, and in accordance with the opinion of the European Parliament, on the three new draft directives concerning freedom of movement of persons which have been submitted by the Commission;
2. Reaffirms that as free movement of persons is one of the four freedoms in the EC Treaty, it must be governed in an EC framework, with judicial review by the European Court of Justice and parliamentary control by the European Parliament;
3. Reiterates its belief that the date of 31 December 1992 was binding for the establishment of the free movement of persons just as it was for the free movement of goods, services and capital;
4. Points out that the entry into force of the so-called flanking measures cannot become a pretext for not implementing Article 7a;
5. Draws attention to the distortions that may arise, and the consequences they may have on the treatment of legal residents moving within the Union, due to the progressive implementation by certain EU Member States of the Schengen Agreement and the cooperation between the Schengen signatories and the Nordic Passport Union;
6. Deplores the lack of parliamentary and judicial scrutiny of the mechanisms governing the freedom of movement of persons currently being implemented;
7. Notes the agreement reached by the Schengen Executive Committee on the observer status granted to the states of the Nordic Passport Union which are also Members of the European Union, namely Denmark, Sweden and Finland, and the will expressed by these countries to become, in the near future, full members of Schengen;
8. Notes the decision taken by the Schengen Executive Committee providing for the signature of a cooperation agreement with Norway and Iceland in the near future, combined with full participation in all proceedings, as well as the will expressed by these two countries to comply with all the provisions of the Schengen Agreement;
9. Insists that the Council and Commission inform and consult Parliament on progress towards free movement of persons on an EU basis, in accordance with their obligations under the Treaties and, for the Commission, under the Code of Conduct of 15 March 1995 negotiated with the European Parliament¹;
10. Stresses that integrating the Nordic Passport Union in the Schengen area must not jeopardise giving the requisite Community dimension to the area covered by the third pillar; calls for this problem to be resolved in a democratic way and in compliance with Community law;
11. Takes note of the decision of the interparliamentary Schengen conference of 8 and 9 December 1995 to coordinate parliamentary monitoring of the working of Schengen, pending integration of Schengen in the European Union; calls for members of the parliaments of all the countries of the Nordic Passport Union, and the European Parliament's delegation, to be admitted to this assembly with the status of full members;

¹ OJ C 89, 10.4.1995, p. 69.

12. Takes the view that the Commission, as the guardian of the Treaties and as a Schengen observer, should inform the European Parliament of all developments occurring within the framework of Schengen;
13. Calls on the Council and the Commission to make clear their views on the integration of the Schengen provisions into the Treaty on European Union, without either opening the door to further distortions or endangering the existing agreement with the Nordic Passport Union;
14. Expresses its intention to review these problems in the context of the forthcoming reports by its relevant committees on the abovementioned Commission proposals and on the incorporation of the provisions of the Schengen Convention into a Community framework;
15. Instructs its President to forward this resolution to the Council, the Commission, the Schengen Executive Committee and the governments and parliaments of the EU Member States, Norway and Iceland.

Annexes

Chapter 5

I

(Information)

COUNCIL

COUNCIL ACT

of 26 July 1995

drawing up the Convention based on Article K.3 of the Treaty on European Union, on the establishment of a European Police Office (Europol Convention)

(95/C 316/01)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article K.3 (2) (c) and Article K.1 (9) thereof,

Whereas for the purposes of achieving the objectives of the Union the Member States regard the establishment of a European Police Office as a matter of common interest;

Has decided on the drawing up of the Convention, the text of which is annexed, which has been signed today by the Representatives of the Governments of the Member States of the Union;

RECOMMENDS that it be adopted by the Member States in accordance with their respective constitutional requirements.

Done at Brussels, 26 July 1995.

For the Council

The President

J. A. BELLOCH JULBE

ANNEX

CONVENTION

based on Article K.3 of the Treaty on European Union, on the establishment of a European Police Office (Europol Convention)

THE HIGH CONTRACTING PARTIES to the present Convention, Member States of the European Union,

REFERRING to the Council Act of 26 July 1995;

AWARE of the urgent problems arising from terrorism, unlawful drug trafficking and other serious forms of international crime;

WHEREAS there is a need for progress in solidarity and cooperation between the Member States of the European Union, particularly through an improvement in police cooperation between the Member States;

WHEREAS such progress should enable the protection of security and public order to be further improved;

WHEREAS the establishment of a European Police Office (Europol) was agreed in the Treaty on European Union of 7 February 1992;

IN VIEW of the decision of the European Council of 29 October 1993 that Europol should be established in the Netherlands and have its seat in The Hague;

MINDFUL of the common objective of improving police cooperation in the field of terrorism, unlawful drug trafficking and other serious forms of international crime through a constant, confidential and intensive exchange of information between Europol and Member States' national units;

ON THE UNDERSTANDING that the forms of cooperation laid down in this Convention should not affect other forms of bilateral or multilateral cooperation;

CONVINCED that in the field of police cooperation, particular attention must be paid to the protection of the rights of individuals, and in particular to the protection of their personal data;

WHEREAS the activities of Europol under this Convention are without prejudice to the powers of the European Communities; whereas Europol and the Communities have a mutual interest, in the framework of the European Union, in establishing types of cooperation enabling each of them to perform their respective tasks as effectively as possible,

HAVE AGREED AS FOLLOWS:

CONTENTS

	Page
TITLE I ESTABLISHMENT AND TASKS	5
Article 1 Establishment	5
Article 2 Objective	5
Article 3 Tasks	5
Article 4 National units	6
Article 5 Liaison officers	6
Article 6 Computerized system of collected information	7
TITLE II INFORMATION SYSTEM	7
Article 7 Establishment of the information system	7
Article 8 Content of the information system	8
Article 9 Right of access to the information system	8
TITLE III WORK FILES FOR THE PURPOSES OF ANALYSIS	9
Article 10 Collection, processing and utilization of personal data	9
Article 11 Index system	10
Article 12 Order opening a data file	11
TITLE IV COMMON PROVISIONS ON INFORMATION PROCESSING	11
Article 13 Duty to notify	11
Article 14 Standard of data protection	11
Article 15 Responsibility in data protection matters	12
Article 16 Prohibitions on drawing up reports	12
Article 17 Rules on the use of data	12
Article 18 Communication of data to third States and third bodies	12
Article 19 Right of access	13
Article 20 Correction and deletion of data	14
Article 21 Time limits for the storage and deletion of data files	15
Article 22 Correction and storage of data in paper files	15
Article 23 National supervisory body	15
Article 24 Joint supervisory body	15
Article 25 Data security	16
TITLE V LEGAL STATUS, ORGANIZATION AND FINANCIAL PROVISIONS	17
Article 26 Legal capacity	17
Article 27 Organs of Europol	17
Article 28 Management Board	17
Article 29 Director	18
Article 30 Staff	19
Article 31 Confidentiality	19
Article 32 Obligation of discretion and confidentiality	19
Article 33 Languages	20

	Page	
Article 34	Informing the European Parliament	20
Article 35	Budget	20
Article 36	Auditing	21
Article 37	Headquarters agreement	21
TITLE VI	LIABILITY AND LEGAL PROTECTION	22
Article 38	Liability for unauthorized or incorrect data processing	22
Article 39	Other liability	22
Article 40	Settlement of disputes	22
Article 41	Privileges and immunities	22
TITLE VII	FINAL PROVISIONS	23
Article 42	Relations with third States and third bodies	23
Article 43	Amendment of the Convention	23
Article 44	Reservations	23
Article 45	Entry into force of the Convention	23
Article 46	Accession by new Member States	24
Article 47	Depositary	24
Annex referred to in Article 2		30
Declaration		32

TITLE I

ESTABLISHMENT AND TASKS

Article 1

Establishment

1. The Member States of the European Union, hereinafter referred to as 'Member States', hereby establish a European Police Office, hereinafter referred to as 'Europol'.

2. Europol shall have with a single national unit in each Member State, to be established or designated in accordance with Article 4.

Article 2

Objective

1. The objective of Europol shall be, within the framework of cooperation between the Member States pursuant to Article K.3 (9) of the Treaty on European Union, to improve, by means of the measures referred to in this Convention, the effectiveness and cooperation of the competent authorities in the Member States in preventing and combating terrorism, unlawful drug trafficking and other serious forms of international crime where there are factual indications that an organized criminal structure is involved and two or more Member States are affected by the forms of crime in question in such a way as to require a common approach by the Member States owing to the scale, significance and consequences of the offences concerned.

2. In order to achieve progressively the objective mentioned in paragraph 1, Europol shall initially act to prevent and combat unlawful drug trafficking, trafficking in nuclear and radioactive substances, illegal immigrant smuggling, trade in human beings and motor vehicle crime.

Within two years at the latest following the entry into force of this Convention, Europol shall also deal with crimes committed or likely to be committed in the course of terrorist activities against life, limb, personal freedom or property. The Council, acting unanimously in accordance with the procedure laid down in Title VI of the Treaty on European Union, may decide to instruct Europol to deal with such terrorist activities before that period has expired.

The Council, acting unanimously in accordance with the procedure laid down in Title VI of the Treaty on European Union, may decide to instruct Europol to deal with other forms of crime listed in the Annex to this Convention or specific manifestations thereof. Before

acting, the Council shall instruct the Management Board to prepare its decision and in particular to set out the budgetary and staffing implications for Europol.

3. Europol's competence as regards a form of crime or specific manifestations thereof shall cover both:

(1) illegal money-laundering activities in connection with these forms of crime or specific manifestations thereof;

(2) related criminal offences.

The following shall be regarded as related and shall be taken into account in accordance with the procedures set out in Articles 8 and 10:

— criminal offences committed in order to procure the means for perpetrating acts within the sphere of competence of Europol,

— criminal offences committed in order to facilitate or carry out acts within the sphere of competence of Europol,

— criminal offences committed to ensure the impunity of acts within the sphere of competence of Europol.

4. For the purposes of this Convention, 'competent authorities' means all public bodies existing in the Member States which are responsible under national law for preventing and combating criminal offences.

5. For the purposes of paragraphs 1 and 2, 'unlawful drug trafficking' means the criminal offences listed in Article 3 (1) of the United Nations Convention of 20 December 1988 against Illicit Traffic in Narcotic Drugs and Psychotropic Substances and in the provisions amending or replacing that Convention.

Article 3

Tasks

1. In the framework of its objective pursuant to Article 2 (1), Europol shall have the following principal tasks:

(1) to facilitate the exchange of information between the Member States;

(2) to obtain, collate and analyse information and intelligence;

(3) to notify the competent authorities of the Member States without delay via the national units referred to in Article 4 of information concerning them and of any connections identified between criminal offences;

(4) to aid investigations in the Member States by forwarding all relevant information to the national units;

(5) to maintain a computerized system of collected information containing data in accordance with Articles 8, 10 and 11.

2. In order to improve the cooperation and effectiveness of the competent authorities in the Member States through the national units with a view to fulfilling the objective set out in Article 2 (1), Europol shall furthermore have the following additional tasks:

(1) to develop specialist knowledge of the investigative procedures of the competent authorities in the Member States and to provide advice on investigations;

(2) to provide strategic intelligence to assist with and promote the efficient and effective use of the resources available at national level for operational activities;

(3) to prepare general situation reports.

3. In the context of its objective under Article 2 (1) Europol may, in addition, in accordance with its staffing and the budgetary resources at its disposal and within the limits set by the Management Board, assist Member States through advice and research in the following areas:

(1) training of members of their competent authorities;

(2) organization and equipment of those authorities;

(3) crime prevention methods;

(4) technical and forensic police methods and investigative procedures.

Article 4

National units

1. Each Member State shall establish or designate a national unit to carry out the tasks listed in this Article.

2. The national unit shall be the only liaison body between Europol and the competent national authorities. Relationships between the national unit and the competent authorities shall be governed by national law, and, in particular the relevant national constitutional requirements.

3. Member States shall take the necessary measures to ensure that the national units are able to fulfil their tasks and, in particular, have access to relevant national data.

4. It shall be the task of the national units to:

(1) supply Europol on their own initiative with the information and intelligence necessary for it to carry out its tasks;

(2) respond to Europol's requests for information, intelligence and advice;

(3) keep information and intelligence up to date;

(4) evaluate information and intelligence in accordance with national law for the competent authorities and transmit this material to them;

(5) issue requests for advice, information, intelligence and analysis to Europol;

(6) supply Europol with information for storage in the computerized system;

(7) ensure compliance with the law in every exchange of information between themselves and Europol.

5. Without prejudice to the exercise of the responsibilities incumbent upon Member States as set out in Article K.2 (2) of the Treaty on European Union, a national unit shall not be obliged in a particular case to supply the information and intelligence provided for in paragraph 4, points 1, 2 and 6 and in Articles 7 and 10 if this would mean:

(1) harming essential national security interests; or

(2) jeopardizing the success of a current investigation or the safety of individuals;

(3) involving information pertaining to organizations or specific intelligence activities in the field of State security.

6. The costs incurred by the national units for communications with Europol shall be borne by the Member States and, apart from the costs of connection, shall not be charged to Europol.

7. The Heads of national units shall meet as necessary to assist Europol by giving advice.

Article 5

Liaison officers

1. Each national unit shall second at least one liaison officer to Europol. The number of liaison officers who may be sent by Member States to Europol shall be laid down by unanimous decision of the Management Board; the decision may be altered at any time by unanimous decision of the Management Board. Except as otherwise stipulated in specific provisions of this Convention, liaison officers shall be subject to the national law of the seconding Member State.

2. The liaison officers shall be instructed by their national units to represent the interests of the latter within Europol in accordance with the national law of the seconding Member State and in compliance with the provisions applicable to the administration of Europol.

3. Without prejudice to Article 4 (4) and (5), the liaison officers shall, within the framework of the objective laid down in Article 2 (1), assist in the exchange of information between the national units which have seconded them and Europol, in particular by:

- (1) providing Europol with information from the seconding national unit;
- (2) forwarding information from Europol to the seconding national unit; and
- (3) cooperating with the officials of Europol by providing information and giving advice as regards analysis of the information concerning the seconding Member State.

4. At the same time, the liaison officers shall assist in the exchange of information from their national units and the coordination of the resulting measures in accordance with their national law and within the framework of the objective laid down in Article 2 (1).

5. To the extent necessary for the performance of the tasks under paragraph 3 above, the liaison officers shall have the right to consult the various files in accordance with the appropriate provisions specified in the relevant Articles.

6. Article 25 shall apply *mutatis mutandis* to the activity of the liaison officers.

7. Without prejudice to the other provisions of this Convention, the rights and obligations of liaison officers in relation to Europol shall be determined unanimously by the Management Board.

8. Liaison officers shall enjoy the privileges and immunities necessary for the performance of their tasks in accordance with Article 41 (2).

9. Europol shall provide Member States free of charge with the necessary premises in the Europol building for the activity of their liaison officers. All other costs which arise in connection with seconding liaison officers shall be borne by the seconding Member State; this shall also apply to the costs of equipment for liaison officers, to the extent that the Management Board does not unanimously recommend otherwise in a specific case when drawing up the budget of Europol.

Article 6

Computerized system of collected information

1. Europol shall maintain a computerized system of collected information consisting of the following components:

- (1) an information system as referred to in Article 7 with a restricted and precisely defined content which allows rapid reference to the information available to the Member States and Europol;
- (2) work files as referred to in Article 10 established for variable periods of time for the purposes of analysis and containing comprehensive information; and
- (3) an index system containing certain particulars from the analysis files referred to in point 2, in accordance with the arrangements laid down in Article 11.

2. The computerized system of collected information operated by Europol must under no circumstances be linked to other automated processing systems, except for the automated processing systems of the national units.

TITLE II

INFORMATION SYSTEM

Article 7

Establishment of the information system

1. In order to perform its tasks, Europol shall establish and maintain a computerized information system. The information system, into which Member States, represented by their national units and liaison officers, may directly input data in compliance with their national procedures, and into which Europol may directly input data supplied by third States and third bodies and analysis data, shall be directly accessible for consultation by national units, liaison officers, the Director, the Deputy Directors and duly empowered Europol officials.

Direct access by the national units to the information system in respect of the persons referred to in Article 8 (1), point 2 shall be restricted solely to the details of identity listed in Article 8 (2). If needed for a specific enquiry, the full range of data shall be accessible them via the liaison officers.

2. Europol shall:

- (1) have the task of ensuring compliance with the provisions governing cooperation on and operation of the information system, and
- (2) be responsible for the proper working of the information system in technical and operational

respects. Europol shall in particular take all necessary measures to ensure that the measures referred to in Articles 21 and 25 regarding the information system are properly implemented.

3. The national unit in each Member State shall be responsible for communication with the information system. It shall, in particular, be responsible for the security measures referred to in Article 25 in respect of the data-processing equipment used within the territory of the Member State in question, for the review in accordance with Article 21 and, in so far as required under the laws, regulations, administrative provisions and procedures of that Member State, for the proper implementation of this Convention in other respects.

Article 8

Content of the information system

1. The information system may be used to store, modify and utilize only the data necessary for the performance of Europol's tasks, with the exception of data concerning related criminal offences as referred to in the second subparagraph of Article 2 (3). Data entered shall relate to:

- (1) persons who, in accordance with the national law of the Member State concerned, are suspected of having committed or having taken part in a criminal offence for which Europol is competent under Article 2 or who have been convicted of such an offence;
- (2) persons who there are serious grounds under national law for believing will commit criminal offences for which Europol is competent under Article 2.

2. Personal data as referred to in paragraph 1 may include only the following details:

- (1) surname, maiden name, given names and any alias or assumed name;
- (2) date and place of birth;
- (3) nationality;
- (4) sex; and
- (5) where necessary, other characteristics likely to assist in identification, including any specific objective physical characteristics not subject to change.

3. In addition to the data referred to in paragraph 2 and data on Europol or the inputting national unit, the information system may also be used to store, modify and utilize the following details concerning the persons referred to in paragraph 1:

- (1) criminal offences, alleged crimes and when and where they were committed;

(2) means which were or may be used to commit the crimes;

(3) departments handling the case and their filing references;

(4) suspected membership of a criminal organization;

(5) convictions, where they relate to criminal offences for which Europol is competent under Article 2.

These data may also be input when they do not yet contain any references to persons. Where Europol inputs the data itself, as well as giving its filing reference it shall also indicate whether the data were provided by a third party or are the result of its own analyses.

4. Additional information held by Europol or national units concerning the groups of persons referred to in paragraph 1 may be communicated to any national unit or Europol should either so request. National units shall do so in compliance with their national law.

Where the additional information concerns one or more related criminal offences as defined in the second subparagraph of Article 2 (3), the data stored in the information system shall be marked accordingly to enable national units and Europol to exchange information on the related criminal offences.

5. If proceedings against the person concerned are dropped or if that person is acquitted, the data relating to either decision shall be deleted.

Article 9

Right of access to the information system

1. Only national units, liaison officers, and the Director, Deputy Directors or duly empowered Europol officials shall have the right to input data directly into the information system and retrieve it therefrom. Data may be retrieved where this is necessary for the performance of Europol's tasks in a particular case; retrieval shall be effected in accordance with the laws, regulations, administrative provisions and procedures of the retrieving unit, subject to any additional provisions contained in this Convention.

2. Only the unit which entered the data may modify, correct or delete such data. Where a unit has reason to believe that data as referred to in Article 8 (2) are incorrect or wishes to supplement them, it shall immediately inform the inputting unit; the latter shall examine such notification without delay and if necessary modify, supplement, correct or delete the data

immediately. Where the system contains data as referred to in Article 8 (3) concerning a person, any unit may enter additional data as referred to in Article 8 (3). Where there is an obvious contradiction between the data input, the units concerned shall consult each other and reach agreement. Where a unit intends to delete altogether data as referred to in Article 8 (2) which has input on a person and where data as referred to in Article 8 (3) are held on the same person but input by other units, responsibility in terms of data protection legislation pursuant to Article 15 (1) and the right to modify, supplement, correct and delete such data pursuant to Article 8 (2) shall be transferred to the next unit to have entered data as referred to in Article 8 (3) on that person.

The unit intending to delete shall inform the unit to which responsibility in terms of data protection is transferred of its intention.

3. Responsibility for the permissibility of retrieval from, input into and modifications within the information system shall lie with the retrieving, inputting or modifying unit; it must be possible to identify that unit. The communication of information between national units and the competent authorities in the Member States shall be governed by national law.

TITLE III

WORK FILES FOR THE PURPOSES OF ANALYSIS

Article 10

Collection, processing and utilization of personal data

1. Where this is necessary to achieve the objective laid down in Article 2 (1), Europol, in addition to data of a non-personal nature, may store, modify, and utilize in other files data on criminal offences for which Europol is competent under Article 2 (2), including data on the related criminal offences provided for in the second subparagraph of Article 2 (3) which are intended for specific analyses, and concerning:

- (1) persons as referred to in Article 8 (1);
- (2) persons who might be called on to testify in investigations in connection with the offences under consideration or in subsequent criminal proceedings;
- (3) persons who have been the victims of one of the offences under consideration or with regard to whom certain facts give reason for believing that they could be the victims of such an offence;
- (4) contacts and associates, and
- (5) persons who can provide information on the criminal offences under consideration.

Article 6 of the Council of Europe Convention of 28 January 1981 in breach of the aforementioned rules with regard to purpose.

The Council, acting unanimously, in accordance with the procedure laid down in Title VI of the Treaty on European Union, shall adopt implementing rules for data files prepared by the Management Board containing additional details, in particular with regard to the categories of personal data referred to in this Article and the provisions concerning the security of the data concerned and the internal supervision of their use.

2. Such files shall be opened for the purposes of analysis defined as the assembly, processing or utilization of data with the aim of helping a criminal investigation. Each analysis project shall entail the establishment of an analysis group closely associating the following participants in accordance with the tasks defined in Article 3 (1) and (2) and Article 5 (3):

- (1) analysts and other Europol officials designated by the Europol Directorate: only analysts shall be authorized to enter data into and retrieve data from the file concerned;
- (2) the liaison officers and/or experts of the Member States supplying the information or concerned by the analysis within the meaning of paragraph 6.

3. At the request of Europol or on their own initiative, national units shall, subject to Article 4 (5), communicate to Europol all the information which it may require for the performance of its tasks under Article 3 (1), point 2. The Member States shall communicate such data only where processing thereof for the purposes of preventing, analysing or combating offences is also authorized by their national law.

The collection, storage and processing of the data listed in the first sentence of Article 6 of the Council of Europe Convention of 28 January 1981 with regard to Automatic Processing of Personal Data shall not be permitted unless strictly necessary for the purposes of the file concerned and unless such data supplement other personal data already entered in that file. It shall be prohibited to select a particular group of persons solely on the basis of the data listed in the first sentence of

Depending on their degree of sensitivity, data from national units may be routed directly and by whatever means may be appropriate to the analysis groups, whether via the liaison officers concerned or not.

4. It, in addition to the data referred to in paragraph 3, it would seem justified for Europol to have other information for the performance of tasks under Article 3 (1), point 2, Europol may request that:

- (1) the European Communities and bodies governed by public law established under the Treaties establishing those Communities;
- (2) other bodies governed by public law established in the framework of the European Union;
- (3) bodies which are based on an agreement between two or more Member States of the European Union;
- (4) third States;
- (5) international organizations and their subordinate bodies governed by public law;
- (6) other bodies governed by public law which are based on an agreement between two or more States; and
- (7) the International Criminal Police Organization,

forward the relevant information to it by whatever means may be appropriate. It may also, under the same conditions and by the same means, accept information provided by those various bodies on their own initiative. The Council, acting unanimously in accordance with the procedure laid down in Title VI of the Treaty on European Union and after consulting the Management Board, shall draw up the rules to be observed by Europol in this respect.

5. In so far as Europol is entitled under other Conventions to gain computerized access to data from other information systems, Europol may retrieve personal data by such means if this is necessary for the performance of its tasks pursuant to Article 3 (1), point 2.

6. If an analysis is of a general nature and of a strategic type, all Member States, through liaison officers and/or experts, shall be fully associated in the findings thereof, in particular through the communication of reports drawn up by Europol.

If the analysis bears on specific cases not concerning all Member States and has a direct operational aim, representatives of the following Member States shall participate therein:

- (1) Member States which were the source of the information giving rise to the decision to open the analysis file, or those which are directly concerned by that information and Member States subsequently invited by the analysis group to take part in the analysis because they are also becoming concerned;

- (2) Member States which learn from consulting the index system that they need to be informed and assert that need to know under the conditions laid down in paragraph 7.

7. The need to be informed may be claimed by authorized liaison officers. Each Member State shall nominate and authorize a limited number of such liaison officers. It shall forward the list thereof to the Management Board.

A liaison officer shall claim the need to be informed as defined in paragraph 6 by means of a written reasoned statement approved by the authority to which he is subordinate in his Member State and forwarded to all the participants in the analysis. He shall then be automatically associated in the analysis in progress.

If an objection is raised in the analysis group, automatic association shall be deferred until completion of a conciliation procedure, which may comprise three stages as follows:

- (1) the participants in the analysis shall endeavour to reach agreement with the liaison officer claiming the need to be informed; they shall have no more than eight days for that purpose;
- (2) if no agreement is reached, the heads of the national units concerned and the Directorate of Europol shall meet within three days;
- (3) if the disagreement persists, the representatives of the parties concerned on the Management Board shall meet within eight days. If the Member State concerned does not waive its need to be informed, automatic association of that Member State shall be decided by consensus.

8. The Member State communicating an item of data to Europol shall be the sole judge of the degree of its sensitivity and variations thereof. Any dissemination or operational use of analysis data shall be decided on in consultation with the participants in the analysis. A Member State joining an analysis in progress may not, in particular, disseminate or use the data without the prior agreement of the Member States initially concerned.

Article 11

Index System

1. An index system shall be created by Europol for the data stored on the files referred to in Article 10 (1).
2. The Director, Deputy Directors and duly empowered officials of Europol and liaison officers shall have the

right to consult the index system. The index system shall be such that it is clear to the liaison officer consulting it, from the data being consulted, that the files referred to in Article 6 (1), point 2 and Article 10 (1) contain data concerning the seconding Member State.

Access by liaison officers shall be defined in such a way that it is possible to determine whether or not an item of information is stored, but that it is not possible to establish connections or further conclusions regarding the content of the files.

3. The detailed procedures for the design of the index system shall be defined by the Management Board acting unanimously.

Article 12

Order opening a data file

1. For every computerized data file containing personal data operated by Europol for the purpose of performing its tasks referred to in Article 10, Europol shall specify in an order opening the file, which shall require the approval of the Management Board:

- (1) the file name;
- (2) the purpose of the file;
- (3) the groups of persons on whom data are stored;

(4) the nature of the data to be stored, and any of the data listed in the first sentence of Article 6 of the Council of Europe Convention of 28 January 1981 which are strictly necessary;

(5) the type of personal data used to open the file;

(6) the supply or input of the data to be stored;

(7) the conditions under which the personal data stored in the file may be communicated, to which recipients and under what procedure;

(8) the time limits for examination and duration of storage;

(9) the method of establishing the audit log.

The joint supervisory body provided for in Article 24 shall immediately be advised by the Director of Europol of the plan to order the opening of such a data file and shall receive the dossier so that it may address any comments it deems necessary to the Management Board.

2. If the urgency of the matter is such as to preclude obtaining the approval of the Management Board as required under paragraph 1, the Director, on his own initiative or at the request of the Member States concerned, may by a reasoned decision, order the opening of a data file. At the same time he shall inform the members of the Management Board of his decision. The procedure pursuant to paragraph 1 shall then be set in motion without delay and completed as soon as possible.

TITLE IV

COMMON PROVISIONS ON INFORMATION PROCESSING

Article 13

Duty to notify

Europol shall promptly notify the national units and also their liaison officers if the national units so request, of any information concerning their Member State and of connections identified between criminal offences for which Europol is competent under Article 2. Information and intelligence concerning other serious criminal offences, of which Europol becomes aware in the course of its duties, may also be communicated.

Article 14

Standard of data protection

1. By the time of the entry into force of this Convention at the latest, each Member State shall, under its national legislation, take the necessary measures in relation to the processing of personal data in data files in the framework

of this Convention to ensure a standard of data protection which at least corresponds to the standard resulting from the implementation of the principles of the Council of Europe Convention of 28 January 1981, and, in doing so, shall take account of Recommendation No R (87) 15 of the Committee of Ministers of the Council of Europe of 17 September 1987 concerning the use of personal data in the police sector.

2. The communication of personal data provided for in this Convention may not begin until the data protection rules laid down in paragraph 1 above have entered into force on the territory of each of the Member States involved in such communication.

3. In the collection, processing and utilization of personal data Europol shall take account of the principles of the Council of Europe Convention of 28 January 1981 and of Recommendation No R (87) 15 of the Committee of Ministers of the Council of Europe of 17 September 1987.

Europol shall also observe the principles in respect of non-automated data held in the form of data files, i.e. any structured set of personal data accessible in accordance with specific criteria.

Article 15

Responsibility in data protection matters

1. Subject to other provisions in this Convention, the responsibility for data stored at Europol, in particular as regards the legality of the collection, the transmission to Europol and the input of data, as well as their accuracy, their up-to-date nature and verification of the storage methods, shall be with:

1. the Member State which input or otherwise communicated the data;
2. Europol in respect of data communicated to Europol by third parties or which result from analyses conducted by Europol.

2. In addition, subject to other provisions in this Convention, Europol shall be responsible for all data received by Europol and processed by it, whether such data be in the information system referred to in Article 8, in the data files opened for the purposes of analysis referred to in Article 10, or in the index system referred to in Article 11, or in the data files referred to in Article 14 (3).

3. Europol shall store data in such a way that it can be established by which Member State or third party the data were transmitted or whether they are the result of an analysis by Europol.

Article 16

Provisions on the drawing up of reports

On average, Europol shall draw up reports for at least one in ten retrievals of personal data — and for each retrieval made within the information system referred to in Article 7 — in order to check whether they are permissible under law. The data contained in the reports shall only be used for that purpose by Europol and the supervisory bodies referred to in Articles 23 and 24 and shall be deleted after six months, unless the data are further required for ongoing control. The details shall be decided upon by the Management Board following consultation with the joint supervisory body.

Article 17

Rules on the use of data

1. Personal data retrieved from the information system, the index system or data files opened for the purposes of analysis and data communicated by any other

appropriate means, may be transmitted or utilized only by the competent authorities of the Member States in order to prevent and combat crimes falling within the competence of Europol and to combat other serious forms of crime.

The data referred to in the first paragraph shall be utilized in compliance with the law of the Member State responsible for the authorities which utilized the data.

Europol may utilize the data referred to in paragraph 1 only for the performance of its tasks as referred to in Article 3.

2. If, in the case of certain data, the communicating Member State or the communicating third State or third body as referred to in Article 10 (4) stipulates particular restrictions on use to which such data is subject in that Member State or by third parties, such restrictions shall also be complied with by the user of the data except in the specific case where national law lays down that the restrictions on use be waived for judicial authorities, legislative bodies or any other independent body set up under the law and made responsible for supervising the national competent authorities within the meaning of Article 2 (4). In such cases, the data may only be used after prior consultation of the communicating Member State whose interests and opinions must be taken into account as far as possible.

3. Use of the data for other purposes or by authorities other than those referred to in Article 2 of this Convention shall be possible only after prior consultation of the Member State which transmitted the data in so far as the national law of that Member State permits.

Article 18

Communication of data to third States and third bodies

1. Europol may under the conditions laid down in paragraph 4 communicate personal data which it holds to third states and third bodies within the meaning of Article 10 (4), where:

- (1) this is necessary in individual cases for the purposes of preventing or combating criminal offences for which Europol is competent under Article 2;
- (2) an adequate level of data protection is ensured in that State or that body; and
- (3) this is permissible under the general rules within the meaning of paragraph 2.

2. In accordance with the procedure in Title VI of the Treaty on European Union, and taking into account the circumstances referred to in paragraph 3, the Council, acting unanimously, shall determine the general rules for

the communication of personal data by Europol to the third States and third bodies within the meaning of Article 10 (4). The Management Board shall prepare the Council decision and consult the joint supervisory body referred to in Article 24.

3. The adequacy of the level of data protection afforded by third States and third bodies within the meaning of Article 10 (4) shall be assessed taking into account all the circumstances which play a part in the communication of personal data; in particular, the following shall be taken into account:

- (1) the nature of the data;
- (2) the purpose for which the data is intended;
- (3) the duration of the intended processing; and
- (4) the general or specific provisions applying to the third States and third bodies within the meaning of Article 10 (4).

4. If the data referred to have been communicated to Europol by a Member State, Europol may communicate them to third States and third bodies only with the Member State's consent. The Member State may give its prior consent, in general or other terms, to such communication; that consent may be withdrawn at any time.

If the data have not been communicated by a Member State, Europol shall satisfy itself that communication of those data is not liable to:

- (1) obstruct the proper performance of the tasks falling within a Member State's sphere of competence;
- (2) jeopardize the security and public order of a Member State or otherwise prejudice its general welfare.

5. Europol shall be responsible for the legality of the authorizing communication. Europol shall keep a record of communications of data and of the grounds for such communications. The communication of data shall be authorized only if the recipient gives an undertaking that the data will be used only for the purpose for which it was communicated. This shall not apply to the communication of personal data required for a Europol inquiry.

6. Where the communication provided for in paragraph 1 concerns information subject to the requirement of confidentiality, it shall be permissible only in so far as an agreement on confidentiality exists between Europol and the recipient.

Article 19

Right of access

1. Any individual wishing to exercise his right of access to data relating to him which have been stored within Europol or to have such data checked may make a request to that effect free of charge to the national competent authority in any Member State he wishes, and

that authority shall refer it to Europol without delay and inform the enquirer that Europol will reply to him directly.

2. The request must be fully dealt with by Europol within three months following its receipt by the national competent authority of the Member State concerned.

3. The right of any individual to have access to data relating to him or to have such data checked shall be exercised in accordance with the law of the Member State where the right is claimed, taking into account the following provisions:

Where the law of the Member State applied to provides for a communication concerning data, such communication shall be refused if such refusal is necessary to:

- (1) enable Europol to fulfil its duties properly;
- (2) protect security and public order in the Member States or to prevent crime;
- (3) protect the rights and freedoms of third parties.

considerations which it follows cannot be overridden by the interests of the person concerned by the communication of the information.

4. The right to communication of information in accordance with paragraph 3 shall be exercised according to the following procedures:

- (1) as regards data entered within the information system defined in Article 8, a decision to communicate such data cannot be taken unless the Member State which entered the data and the Member States directly concerned by communication of such data have first had the opportunity of stating their position, which may extend to a refusal to communicate the data. The data which may be communicated and the arrangements for communicating such data shall be indicated by the Member State which entered the data;
- (2) as regards data entered within the information system by Europol, the Member States directly concerned by communication of such data must first have had the opportunity of stating their position, which may extend to a refusal to communicate the data;
- (3) as regards data entered within the work files for the purposes of analysis as defined in Article 10, the communication of such data shall be conditional upon the consensus of Europol and the Member States participating in the analysis, within the meaning of Article 10 (2), and the consensus of the Member State(s) directly concerned by the communication of such data.

Should one or more Member State or Europol have objected to a communication concerning data, Europol shall notify the person concerned that it has carried out

the checks, without giving any information which might reveal to him whether or not he is known.

5. The right to the checking of information shall be exercised in accordance with the following procedures:

Where the national law applicable makes no provision for a communication concerning data or in the case of a simple request for a check, Europol, in close cooperation with the national authorities concerned, shall carry out the checks and notify the enquirer that it has done so without giving any information which might reveal to him whether or not he is known.

6. In its reply to a request for a check or for access to data, Europol shall inform the enquirer that he may appeal to the joint supervisory body if he is not satisfied with the decision. The latter may also refer the matter to the joint supervisory body if there has been no response to his request within the time limits laid down in its Article.

7. If the enquirer lodges an appeal to the joint supervisory body provided for in Article 24, the appeal shall be examined by that body.

Where the appeal relates to a communication concerning data entered by a Member State in the information system, the joint supervisory body shall take its decision in accordance with the national law of the Member State in which the application was made. The joint supervisory body shall first consult the national supervisory body or the competent judicial body in the Member State which was the source of the data. Either national body shall make the necessary checks, in particular to establish whether the decision to refuse was taken in accordance with paragraphs 3 and 4 (1) of this Article. On confirmation of that, the decision, which may extend to a refusal to communicate any information, shall be taken by the joint supervisory body in close cooperation with the national supervisory body or competent judicial body.

Where the appeal relates to a communication concerning data entered by Europol in the information system or data stored in the work files for the purposes of analysis, the joint supervisory body, in the event of persistent objections from Europol or a Member State, may not overrule such objections unless by a majority of two-thirds of its members after having heard Europol or the Member State concerned. If there is no such majority, the joint supervisory body shall notify the enquirer that it has carried out the checks, without giving any information which might reveal to him whether or not he is known.

Where the appeal concerns the checking of data entered by a Member State in the information system, the joint

supervisory body shall ensure that the necessary checks have been carried out correctly in close cooperation with the national supervisory body of the Member State which entered the data. The joint supervisory body shall notify the enquirer that it has carried out the checks, without giving any information which might reveal to him whether or not he is known.

Where the appeal concerns the checking of data entered by Europol in the information system or of data stored in the work files for the purposes of analysis, the joint supervisory body shall ensure that the necessary checks have been carried out by Europol. The joint supervisory body shall notify the enquirer that it has carried out the checks, without giving any information which might reveal to him whether or not he is known.

8. The above provisions shall apply *mutatis mutandis* to non-automated data held by Europol in the form of data files, i. e. any structured set of personal data accessible in accordance with specific criteria.

Article 20

Correction and deletion of data

1. If it emerges that data held by Europol which have been communicated to it by third States or third bodies or which are the result of its own analyses are incorrect or that their input or storage contravenes this Convention, Europol shall correct or delete such data.

2. If data that are incorrect or that contravene this Convention have been passed directly to Europol by Member States, they shall be obliged to correct or delete them in collaboration with Europol. If incorrect data are transmitted by another appropriate means or if the errors in the data supplied by Member States are due to faulty transmission or have been transmitted in breach of the provisions of this Convention or if they result from their being entered, taken over or stored in an incorrect manner or in breach of the provisions of this Convention by Europol, Europol shall be obliged to correct them or delete them in collaboration with the Member States concerned.

3. In the cases referred to in paragraphs 1 and 2, the Member States which are recipients of the data shall be notified forthwith. The recipient Member States shall also correct or delete those data.

4. Any person shall have the right to ask Europol to correct or delete incorrect data concerning him.

Europol shall inform the enquirer that data concerning him have been corrected or deleted. If the enquirer is not satisfied with Europol's reply or if he has received no

reply within three months, he may refer the matter to the joint supervisory body.

Article 21

Time limits for the storage and deletion of data files

1. Data in data files shall be held by Europol only for as long as is necessary for the performance of its tasks. The need for continued storage shall be reviewed no later than three years after the input of data. Review of data stored in the information system and its deletion shall be carried out by the inputting unit. Review of data stored in other Europol data files and their deletion shall be carried out by Europol. Europol shall automatically inform the Member States three months in advance of the expiry of the time limits for reviewing the storage of data.

2. During the review, the units referred to in the third and fourth sentences of paragraph 1 above may decide on continued storage of data until the next review if this is still necessary for the performance of Europol's tasks. If no decision is taken on the continued storage of data, those data shall automatically be deleted.

3. Storage of personal data relating to individuals as referred to in point 1 of the first subparagraph of Article 10 (1) may not exceed a total of three years. Each time limit shall begin to run afresh on the date on which an event leading to the storage of data relating to that individual occurs. The need for continued storage shall be reviewed annually and the review documented.

4. Where a Member State deletes from its national data files data communicated to Europol which are stored in other Europol data files, it shall inform Europol accordingly. In such cases, Europol shall delete the data unless it has further interest in them, based on intelligence that is more extensive than that possessed by the communicating Member State. Europol shall inform the Member State concerned of the continued storage of such data.

5. Deletion shall not occur if it would damage the interests of the data subject which require protection. In such cases, the data may be used only with the consent of the data subject.

Article 22

Correction and storage of data in paper files

1. If it emerges that an entire paper file or data included in that file held by Europol are no longer necessary for the performance of Europol's tasks, or if the information concerned is overall in contravention of this Convention, the paper file or data concerned shall be destroyed. The

paper file or data concerned must be marked as not for use until they have been effectively destroyed.

Destruction may not take place if there are grounds for assuming that the legitimate interests of the data subject would otherwise be prejudiced. In such cases, the paper file must bear the same note prohibiting all use.

2. If it emerges that data contained in the Europol paper files are incorrect, Europol shall be obliged to correct them.

3. Any person covered by a Europol paper file may claim the right *vis-à-vis* Europol to correction or destruction of paper files or the inclusion of a note. Article 20 (4) and Article 24 (2) and (7) shall be applicable.

Article 23

National supervisory body

1. Each Member State shall designate a national supervisory body, the task of which shall be to monitor independently, in accordance with its respective national law, the permissibility of the input, the retrieval and any communication to Europol of personal data by the Member State concerned and to examine whether this violates the rights of the data subject. For this purpose, the supervisory body shall have access at the national unit or at the liaison officers' premises to the data entered by the Member State in the information system and in the index system in accordance with the relevant national procedures.

For their supervisory purposes, national supervisory bodies shall have access to the offices and documents of their respective liaison officers at Europol.

In addition, in accordance with the relevant national procedures, the national supervisory bodies shall supervise the activities of national units under Article 4 (4) and the activities of liaison officers under Article 5 (3), points 1 and 3 and Article 5 (4) and (5), in so far as such activities are of relevance to the protection of personal data.

2. Each individual shall have the right to request the national supervisory body to ensure that the entry or communication of data concerning him to Europol in any form and the consultation of the data by the Member State concerned are lawful.

This right shall be exercised in accordance with the national law of the Member State to the national supervisory body of which the request is made.

Article 24

Joint supervisory body

1. An independent joint supervisory body shall be set up, which shall have the task of reviewing, in accordance

with this convention, the activities of Europol in order to ensure that the rights of the individual are not violated by the storage, processing and utilization of the data held by Europol. In addition, the joint supervisory body shall monitor the permissibility of the transmission of data originating from Europol. The joint supervisory body shall be composed of not more than two members or representatives (where appropriate assisted by alternates) of each of the national supervisory bodies guaranteed to be independent and having the necessary abilities, and appointed for five years by each Member State. Each delegation shall be entitled to one vote.

The joint supervisory body shall appoint a chairman from among its members.

In the performance of their duties, the members of the joint supervisory body shall not receive instructions from any other body.

2. Europol must assist the joint supervisory body in the performance of the latter's tasks. In doing so, it shall in particular:

- (1) supply the information it requests, give it access to all documents and paper files as well as access to the data stored in the system; and
- (2) allow it free access at any time to all its premises;
- (3) carry out the joint supervisory body's decisions on appeals in accordance with the provisions of Articles 19 (7) and 20 (4).

3. The joint supervisory body shall also be competent for the examination of questions relating to implementation and interpretation in connection with Europol's activities as regards the processing and utilization of personal data, for the examination of questions relating to checks carried out independently by the national supervisory bodies of the Member States or relating to the exercise of the right to information, as well as for drawing up harmonized proposals for common solutions to existing problems.

4. Each individual shall have the right to request the joint supervisory body to ensure that the manner in which his personal data have been collected, stored, processed and utilized by Europol is lawful and accurate.

5. If the joint supervisory body notes any violations of the provisions of this Convention in the storage, processing or utilization of personal data, it shall make any complaints it deems necessary to the Director of Europol and shall request him to reply within a time limit to be determined by it. The Director shall keep the

Management Board informed of the entire procedure. In the event of any difficulty, the joint supervisory body shall refer the matter to the Management Board.

6. The joint supervisory body shall draw up activity reports at regular intervals. In accordance with the procedure laid down in Title VI of the Treaty on European Union, these shall be forwarded to the Council; the Management Board shall first have the opportunity to deliver an opinion, which shall be attached to the reports.

The joint supervisory body shall decide whether or not to publish its activity report, and, if it decides to do so, determine how it should be published.

7. The joint supervisory body shall unanimously adopt its rules of procedure, which shall be submitted for the unanimous approval of the Council. It shall set up internally a committee comprising one qualified representative from each Member State with entitlement to a vote. The committee shall have the task of examining the appeals provided for in Articles 19 (7) and 20 (4) by all appropriate means. Should they so request the parties, assisted by their advisers if they so wish, shall be heard by the committee. The decisions taken in this context shall be final as regards all the parties concerned.

8. It may also set up one or more other committees.

9. It shall be consulted on that part of the budget which concerns it. Its opinion shall be annexed to the draft budget in question.

10. It shall be assisted by a secretariat, the tasks of which shall be defined in the rules of procedures.

Article 25

Data security

1. Europol shall take the necessary technical and organizational measures to ensure the implementation of this Convention. Measures shall only be necessary where the effort they involve is proportionate to the objective they are designed to achieve in terms of protection.

2. In respect of automated data processing at Europol each Member State and Europol shall implement measures designed to:

- (1) deny unauthorized persons access to data processing equipment used for processing personal data (equipment access control);

- (2) prevent the unauthorized reading, copying, modification or removal of data media (data media control);
- (3) prevent the unauthorized input of data and the unauthorized inspection, modification or deletion of stored personal data (storage control);
- (4) prevent the use of automated data processing systems by unauthorized persons using data communication equipment (user control);
- (5) ensure that persons authorized to use an automated data processing system only have access to the data covered by their access authorization (data access control);
- (6) ensure that it is possible to verify and establish to which bodies personal data may be transmitted using data communication equipment (communication control);
- (7) ensure that it is subsequently possible to verify and establish which personal data have been input into automated data or processing systems and when and by whom the data were input (input control);
- (8) prevent unauthorized reading, copying, modification or deletion of personal data during transfers of personal data or during transportation of data media (transport control);
- (9) ensure that installed systems may, in case of interruption, be immediately restored (recovery);
- (10) ensure that the functions of the system perform without fault, that the appearance of faults in the functions is immediately reported (reliability) and that stored data cannot be corrupted by means of a malfunctioning of the system (integrity).

TITLE V

LEGAL STATUS, ORGANIZATION AND FINANCIAL PROVISIONS

Article 26

Legal capacity

1. Europol shall have legal personality.
2. Europol shall enjoy in each Member State the most extensive legal and contractual capacity available to legal persons under that State's law. Europol may in particular acquire and dispose of movable or immovable property and be a party to legal proceedings.
3. Europol shall be empowered to conclude a headquarters agreement with the Kingdom of the Netherlands and to conclude with third States and third bodies within the meaning of Article 10 (4) the necessary confidentiality agreements pursuant to Article 18 (6) as well as other arrangements in the framework of the rules laid down unanimously by the Council on the basis of this Convention and of Title VI of the Treaty on European Union.

Article 27

Organs of Europol

The organs of Europol shall be:

- (1) the Management Board;
- (2) the Director;
- (3) the Financial Controller;
- (4) the Financial Committee.

Article 28

Management Board

1. Europol shall have a Management Board. The Management Board:
 - (1) shall take part in the extension of Europol's objective (Article 2 (2));
 - (2) shall define unanimously liaison officers' rights and obligations towards Europol (Article 5);
 - (3) shall decide unanimously on the number of liaison officers the Member States may send to Europol (Article 5);
 - (4) shall prepare the implementing rules governing data files (Article 10);
 - (5) shall take part in the adoption of rules governing Europol's relations with third States and third bodies with the meaning of Article 10 (4) (Articles 10, 18 and 42)
 - (6) shall unanimously decide on details concerning the design of the index system (Article 11);
 - (7) shall approve by a two-thirds majority orders opening data files (Article 12);
 - (8) may deliver opinions on the comments and reports of the joint supervisory body (Article 24);

- (9) shall examine problems which the joint supervisory body brings to its attention (Article 24 (5));
- (10) shall decide on the details of the procedure for checking the legal character of retrievals in the information system (Article 16);
- (11) shall take part in the appointment and dismissal of the Director and Deputy Directors (Article 29);
- (12) shall oversee the proper performance of the Director's duties (Articles 7 and 29);
- (13) shall take part in the adoption of staff regulations (Article 30);
- (14) shall take part in the preparation of agreements on confidentiality and the adoption of provisions on the protection of confidentiality (Articles 18 and 31);
- (15) shall take part in the drawing up of the budget, including the establishment plan, the auditing and the discharge to be given to the Director (Articles 35 and 36);
- (16) shall adopt unanimously the five-year financing plan (Article 35);
- (17) shall appoint unanimously the financial controller and oversee the performance of his duties (Article 35);
- (18) shall take part in the adoption of the financial regulation (Article 35);
- (19) shall unanimously approve the conclusion of the headquarters agreement (Article 37);
- (20) shall adopt unanimously the rules for the security clearance of Europol officials;
- (21) shall act by a two-thirds majority in disputes between a Member State and Europol or between Member States concerning compensation paid under the liability for unauthorized or incorrect processing of data (Article 38);
- (22) shall take part in any amendment of this Convention (Article 43);
- (23) shall be responsible for any other tasks assigned to it by the Council particularly in provisions for the implementation of this Convention.
2. The Management Board shall be composed of one representative of each Member State. Each member of the Management Board shall have one vote.
3. Each member of the Management Board may be represented by an alternate member; in the absence of the full member, the alternate member may exercise his right to vote.
4. The Commission of the European Communities shall be invited to attend meetings of the Management Board with non-voting status. However, the Management Board may decide to meet without the Commission representative.
5. The members or alternate members shall be entitled to be accompanied and advised by experts from their respective Member States at meetings of the Management Board.
6. The Management Board shall be chaired by the representative of the Member State holding the Presidency of the Council.
7. The Management Board shall unanimously adopt its rules of procedure.
8. Abstentions shall not prevent the Management Board from adopting decisions which must be taken unanimously.
9. The Management Board shall meet at least twice a year.
10. The Management Board shall adopt unanimously each year:
- (1) a general report on Europol's activities during the previous year;
 - (2) a report on Europol's future activities taking into account Member States' operational requirements and budgetary and staffing implications for Europol.
- These reports shall be submitted to the Council in accordance with the procedure laid down in Title VI of the Treaty on European Union.

Article 29

Director

1. Europol shall be headed by a Director appointed by the Council, acting unanimously in accordance with the procedure laid down in Title VI of the Treaty on European Union after obtaining the opinion of the Management Board, for a four-year period renewable once.
2. The Director shall be assisted by a number of Deputy Directors as determined by the Council and appointed for a four-year period renewable once, in accordance with the procedure laid down in paragraph 1. Their tasks shall be defined in greater detail by the Director.
3. The Director shall be responsible for:
 - (1) performance of the tasks assigned to Europol;
 - (2) day-to-day administration;
 - (3) personnel management;
 - (4) proper preparation and implementation of the Management Board's decisions;

- (5) preparing the draft budget, draft establishment plan and draft five-year financing plan and implementing Europol's budget;
- (6) all other tasks assigned to him in this Convention or by the Management Board.
4. The Director shall be accountable to the Management Board in respect of the performance of his duties. He shall attend its meetings.
5. The Director shall be Europol's legal representative.
6. The Director and the Deputy Directors may be dismissed by a decision of the Council, to be taken in accordance with the procedure laid down in Title VI of the Treaty on European Union by a two-thirds majority of the Member States, after obtaining the opinion of the Management Board.
7. Notwithstanding paragraphs 1 and 2, the first term of office after entry into force of this Convention shall be five years for the Director, four years for his immediate Deputy and three years for the second Deputy Director.

Article 30

Staff

1. The Director, Deputy Directors and the employees of Europol shall be guided in their actions by the objectives and tasks of Europol and shall not take or seek orders from any government, authority, organization or person outside Europol, save as otherwise provided in this Convention and without prejudice to Title VI of the Treaty on European Union.
2. The Director shall be in charge of the Deputy Directors and employees of Europol. He shall engage and dismiss employees. In selecting employees, in addition to having regard to personal suitability and professional qualifications, he shall take into account the need to ensure the adequate representation of nationals of all Member States and of the official languages of the European Union.
3. Detailed arrangements shall be laid down in staff regulations which the Council shall, after obtaining the opinion of the Management Board, adopt unanimously in accordance with the procedure laid down in Title VI of the Treaty on European Union.

Article 31

Confidentiality

1. Europol and the Member States shall take appropriate measures to protect information subject to

the requirement of confidentiality which is obtained by or exchanged with Europol on the basis of this Convention. To this end the Council shall unanimously adopt appropriate rules on confidentiality prepared by the Management Board and submitted to the Council in accordance with the procedure laid down in Title VI of the Treaty on European Union.

2. Where Europol has entrusted persons with a sensitive activity, Member States shall undertake to arrange, at the request of the Director of Europol, for security screening of their own nationals to be carried out in accordance with their national provisions and to provide each other with mutual assistance for the purpose. The relevant authority under national provisions shall inform Europol only of the results of the security screening, which shall be binding on Europol.

3. Each Member State and Europol may entrust with the processing of data at Europol, only those persons who have had special training and undergone security screening.

Article 32

Obligation of discretion and confidentiality

1. Europol organs, their members, the Deputy Directors, employees of Europol and liaison officers shall refrain from any action and any expression of opinion which might be harmful to Europol or prejudice its activities.
2. Europol organs, their members, the Deputy Directors, employees of Europol and liaison officers, as well as any other person under a particular obligation of discretion or confidentiality, shall be bound not to disclose any facts or information which come to their knowledge in the performance of their duties or the exercise of their activities to any unauthorized person or to the public. This shall not apply to facts or information too insignificant to require confidentiality. The obligation of discretion and confidentiality shall apply even after leaving office or employment, or after termination of activities. The particular obligation laid down in the first sentence shall be notified by Europol, and a warning given of the legal consequences of any infringement; a written record shall be drawn up of such notification.
3. Europol organs, their members, the Deputy Directors, employees of Europol and liaison officers, as well as persons under the obligation provided for in paragraph 2, may not give evidence in or outside court or make any statements on any facts or information which come to their knowledge in the performance of their duties or the exercise of their activities, without reference to the Director or, in the case of the Director himself, to the Management Board.

The Director or Management Board, depending on the case, shall approach the judicial body or any other competent body with a view to taking the necessary measures under the national law applicable to the body approached; such measures may either be to adjust the procedures for giving evidence in order to ensure the confidentiality of the information, or provided that the national law concerned so permits, to refuse to make any communication concerning data in so far as is vital for the protection of the interests of Europol or of a Member State.

Where a Member State's legislation provides for the right to refuse to give evidence, persons asked to give evidence must obtain permission to do so. Permission shall be granted by the Director and, as regards evidence to be given by the Director, by the Management Board. Where a liaison officer is asked to give evidence concerning information he receives from Europol, such permission shall be given after the agreement of the Member State responsible for the officer concerned has been obtained.

Furthermore, if the possibility exists that the evidence may extend to information and knowledge which a Member State has communicated to Europol or which clearly involve a Member State, the position of that Member State concerning the evidence must be sought before permission is given.

Permission to give evidence may be refused only in so far as this is necessary to protect overriding interests of Europol or of a Member State or States that need protection.

This obligation shall apply even after leaving office or employment or after termination of activities.

4. Each Member State shall treat any infringement of the obligation of discretion or confidentiality laid down in paragraphs 2 and 3 as a breach of the obligations imposed by its law on official or professional secrets or its provisions for the protection of confidential material.

Where appropriate, each Member State shall introduce, no later than the date of entry into force of this Convention, the rules under national law or the provisions required to proceed against breaches of the obligations of discretion or confidentiality referred to in paragraphs 2 and 3. It shall ensure that the rules and provisions concerned apply also to its own employees who have contact with Europol in the course of their work.

Article 33

Languages

1. Reports and all other papers and documentation placed before the Management Board shall be submitted in all official languages of the European Union; the

working languages of the Management Board shall be the official languages of the European Union.

2. The translations required for Europol's work shall be provided by the translation centre of the European Union institutions.

Article 34

Informing the European Parliament

1. The Council Presidency shall each year forward a special report to the European Parliament on the work of Europol. The European Parliament shall be consulted should this Convention be amended in any way.

2. The Council Presidency or its representative appointed by the Presidency shall, with respect to the European Parliament, take into account the obligations of discretion and confidentiality.

3. The obligations laid down in this Article shall be without prejudice to the rights of national parliaments, to Article K.6 of the Treaty on European Union and to the general principles applicable to relations with the European Parliament pursuant to Title VI of the Treaty on European Union.

Article 35

Budget

1. Estimates shall be drawn up of all of Europol's income and expenditure including all costs of the joint supervisory body and of the secretariat set up by it under Article 22 for each financial year and these items entered in the budget; an establishment plan shall be appended to the budget. The financial year shall begin on 1 January and end on 31 December.

The income and expenditure shown in the budget shall be in balance.

A five-year financing plan shall be drawn up together with the budget.

2. The budget shall be financed from Member States' contributions and by other incidental income. Each Member State's financial contribution shall be determined according to the proportion of its gross national product to the sum total of the gross national products of the Member States for the year preceding the year in which the budget is drawn up. For the purposes of this paragraph, 'gross national product' shall mean gross national product as determined in accordance with Council Directive 89/130/EEC, Euratom of 13 February 1989 on the harmonization of the compilation of gross national product at market prices.

3. By 31 March each year at the latest, the Director shall draw up the draft budget and draft establishment

plan for the following financial year and shall submit them, after examination by the Financial Committee, to the Management Board together with the draft five-year financing plan.

4. The Management Board shall take a decision on the five-year financing plan. It shall act unanimously.

5. After obtaining the opinion of the Management Board, the Council shall, in accordance with the procedure laid down in Title VI of the Treaty on European Union, adopt Europol's budget by 30 June of the year preceding the financial year at the latest. It shall act unanimously. The adoption of the budget by the Council shall entail the obligation for each Member State to make available promptly the financial contribution due from it.

6. The Director shall implement the budget in accordance with the financial regulation provided for in paragraph 9.

7. Monitoring of the commitment and disbursement of expenditure and of the establishment and collection of income shall be carried out by a financial controller from an official audit body of one of the Member States who shall be appointed by the Management Board, acting unanimously, and shall be accountable to it. The financial regulation may make provision for *ex-post* monitoring by the financial controller in the case of certain items of income or expenditure.

8. The Financial Committee shall be composed of one budgetary representative from each Member State. Its task shall be to prepare for discussions on budgetary and financial matters.

9. The Council shall, in accordance with the procedure laid down in Title VI of the Treaty on European Union, unanimously adopt the financial regulation, specifying in particular the detailed rules for drawing up, amending and implementing the budget and for monitoring its implementation as well as for the manner of payment of financial contributions by the Member States.

Article 36

Auditing

1. The accounts in respect of all income and expenditure entered in the budget together with the balance sheet showing Europol's assets and liabilities shall be subject to an annual audit in accordance with the financial regulation. For this purpose the Director shall submit a report on the annual accounts by 31 May of the following year at the latest.

2. The audit shall be carried out by a joint audit committee composed of three members, appointed by the Court of Auditors of the European Communities on a proposal from its President. The term of office of the members shall be three years; these shall alternate in such a way that each year the member who has been on the audit committee for three years shall be replaced. Notwithstanding the provisions of the second sentence, the term of office of the member that, after drawing lots:

- is first, shall be two years,
- is second, shall be three years,
- is third, shall be four years.

in the initial composition of the joint audit committee after Europol has begun to operate.

Any costs arising from the audit shall be charged to the budget provided for in Article 35.

3. The joint audit committee shall in accordance with the procedure laid down in Title VI of the Treaty on European Union submit to the Council an audit report on the annual accounts; prior thereto the Director and Financial Controller shall be given an opportunity to express an opinion on the audit report and the report shall be discussed by the Management Board.

4. The Europol Director shall provide the members of the joint audit committee with all information and every assistance which they require in order to perform their task.

5. A decision on the discharge to be given to the Director in respect of budget implementation for the financial year in question shall be taken by the Council, after examination of the report on the annual accounts.

6. The detailed rules for performing audits shall be laid down in the Financial Regulation.

Article 37

Headquarters agreement

The necessary arrangements concerning the accommodation to be provided for Europol in the headquarters State and the facilities to be made available by that State as well as the particular rules applicable in the Europol headquarters State to members of Europol's organs, its Deputy Directors, employees and members of their families shall be laid down in a headquarters agreement between Europol and the Kingdom of the Netherlands to be concluded after obtaining the unanimous approval of the Management Board.

TITLE VI

LIABILITY AND LEGAL PROTECTION

Article 38

Liability for unauthorized or incorrect data processing

1. Each Member State shall be liable, in accordance with its national law, for any damage caused to an individual as a result of legal or factual errors in data stored or processed at Europol. Only the Member State in which the event which gave rise to the damage occurred may be the subject of an action for compensation on the part of the injured party, who shall apply to the courts having jurisdiction under the national law of the Member State involved. A Member State may not plead that another Member State had transmitted inaccurate data in order to avoid its liability under its national legislation *vis-à-vis* an injured party.

2. If these legal or factual errors occurred as a result of data erroneously communicated or of failure to comply with the obligations laid down in this Convention on the part of one or more Member States or as a result of unauthorized or incorrect storage or processing by Europol, Europol or the other Member State in question shall be bound to repay, on request, the amounts paid as compensation unless the data were used by the Member State in the territory of which the damage was caused in breach of this Convention.

3. Any dispute between that Member State and Europol or another Member State over the principle or amount of the repayment must be referred to the Management Board, which shall settle the matter by a two-thirds majority.

Article 39

Other liability

1. Europol's contractual liability shall be governed by the law applicable to the contract in question.

2. In the case of non-contractual liability, Europol shall be obliged, independently of any liability under Article 38, to make good any damage caused through the fault of its organs, of its Deputy Directors or of its employees in the performance of their duties, in so far as it may be imputed to them and regardless of the different procedures for claiming damages which exist under the law of the Member States.

3. The injured party shall have the right to demand that Europol refrain from or drop any action.

4. The national courts of the Member States competent to deal with disputes involving Europol's liability as referred to in this Article shall be determined by reference to the relevant provisions of the Brussels Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgements in Civil and Commercial Matters, as later amended by Accession Agreements.

Article 40

Settlement of disputes

1. Disputes between Member States on the interpretation or application of this Convention shall in an initial stage be discussed by the Council in accordance with the procedure set out in Title VI of the Treaty on European Union with the aim of finding a settlement.

2. When such disputes are not so settled within six months, the Member States who are parties to the dispute shall decide, by agreement among themselves, the modalities according to which they shall be settled.

3. The provisions on appeals referred to in the rules relating to the conditions of employment applicable to temporary and auxiliary staff of the European Communities shall apply, *mutatis mutandis*, to Europol staff.

Article 41

Privileges and immunities

1. Europol, the members of its organs and the Deputy Directors and employees of Europol shall enjoy the privileges and immunities necessary for the performance of their task in accordance with a Protocol setting out the rules to be applied in all Member States.

2. The Kingdom of the Netherlands and the other Member States shall agree in the same terms that liaison officers seconded from the other Member States as well as members of their families shall enjoy those privileges and immunities necessary for the proper performance of the tasks of the liaison officers at Europol.

3. The Protocol referred to in paragraph 1 shall be adopted by the Council acting unanimously in accordance with the procedure laid down in Title VI of the Treaty on European Union and approved by the Member States in accordance with their respective constitutional requirements.

TITLE VII

FINAL PROVISIONS

Article 42

Relations with third States and third bodies

1. In so far as is relevant for the performance of the tasks described in Article 3, Europol shall establish and maintain cooperative relations with third bodies within the meaning of Article 10 (4), points 1 to 3. The Management Board shall unanimously draw up rules governing such relations. This provision shall be without prejudice to Article 10 (4) and (5) and Article 18 (2); exchanges of personal data shall take place only in accordance with the provisions of Titles II to IV of this Convention.

2. In so far as is required for the performance of the tasks described in Article 3, Europol may also establish and maintain relations with third States and third bodies within the meaning of Article 10 (4), points 4, 5, 6 and 7. Having obtained the opinion of the Management Board, the Council, acting unanimously in accordance with the procedure laid down in Title VI of the Treaty on European Union, shall draw up rules governing the relations referred to in the first sentence. The third sentence of paragraph 1 shall apply *mutatis mutandis*.

Article 43

Amendment of the Convention

1. In accordance with the procedure laid down in Title VI of the Treaty on European Union, the Council, acting on a proposal from a Member State and, after consulting the Management Board, shall unanimously decide, within the framework of Article K.1 (9) of the Treaty on European Union, on any amendments to this Convention which it shall recommend to the Member States for adoption in accordance with their respective constitutional requirements.

2. The amendments shall enter into force in accordance with Article 45 (2) of this Convention.

3. However, the Council, acting unanimously in accordance with the procedure laid down in Title VI of the Treaty on European Union, may decide, on the initiative of a Member State and after the Management Board has discussed the matter, to amplify, amend or supplement the definitions of forms of crime contained in the Annex. It may in addition decide to introduce new definitions of the forms of crime listed in the Annex.

4. The Secretary-General of the Council of the European Union shall notify all Member States of the date of entry into force of the amendments.

Article 44

Reservations

Reservations shall not be permissible in respect of this Convention.

Article 45

Entry into force

1. This Convention shall be subject to adoption by the Member States in accordance with their respective constitutional requirements.

2. Member States shall notify the depositary of the completion of their constitutional requirements for adopting this Convention.

3. This Convention shall enter into force on the first day of the month following the expiry of a three-month period after the notification, referred to in paragraph 2, by the Member State which, being a member of the European Union on the date of adoption by the Council of the act drawing up this Convention, is the last to fulfil that formality.

4. Without prejudice to paragraph 2, Europol shall not take up its activities under this Convention until the last of the acts provided for in Articles 5 (7), 10 (1), 24 (7), 30 (3), 31 (1), 35 (9), 37 and 41 (1) and (2) enters into force.

5. When Europol takes up its activities, the activities of the Europol Drugs Unit under the joint action concerning the Europol Drugs Unit of 10 March 1995 shall come to an end. At the same time, all equipment financed from the Europol Drugs Unit joint budget, developed or produced by the Europol Drugs Unit or placed at its disposal free of charge by the headquarters State for its permanent use, together with that Unit's entire archives and independently administered data files shall become the property of Europol.

6. Once the Council has adopted the act drawing up this Convention, Member States, acting either individually or in common, shall take all preparatory measures under their national law which are necessary for the commencement of Europol activities.

*Article 46***Accession by new Member States**

1. This Convention shall be open to accession by any State that becomes a member of the European Union.
2. The text of this Convention in the language of the acceding State, drawn up by the Council of the European Union, shall be authentic.
3. Instruments of accession shall be deposited with the depositary.
4. This Convention shall enter into force with respect to any State that accedes to it on the first day of the month

following expiry of a three-month period following the date of deposit of its instrument of accession or on the date of entry into force of the Convention if it has not already entered into force at the time of expiry of the said period.

*Article 47***Depositary**

1. The Secretary-General of the Council of the European Union shall act as depositary of this Convention.
2. The depositary shall publish in the *Official Journal of the European Communities* the notifications, instruments or communications concerning this Convention.

En fe de lo cual, los plenipotenciarios abajo firmantes suscriben el presente Convenio.

Til bekræftelse heraf har undertegnede befuldmægtigede underskrevet denne konvention.

Zu Urkund dessen haben die unterzeichneten Bevollmächtigten ihre Unterschriften unter dieses Übereinkommen gesetzt.

Σε πίστωση των ανωτέρω, οι υπογράφοντες πληρεξούσιοι έθεσαν την υπογραφή τους κάτω από την παρούσα σύμβαση.

In witness whereof, the undersigned Plenipotentiaries have hereunto set their hands.

En foi de quoi, les plénipotentiaires soussignés ont apposé leurs signatures au bas de la présente convention.

Dá bhuanú sin, chuir na Láinchumhachtaigh thíos-sínte a lámh leis an gComhshúin seo.

In fede di che, i plenipotenziari sottoscritti hanno apposto le loro firme in calce alla presente convenzione.

Ten blijke waarvan de ondergetekende gevolmachtigden hun handtekening onder deze overeenkomst hebben gesteld.

Em fé do que, os plenipotenciários abaixo assinados apuseram as suas assinaturas no final da presente convenção.

Taman vakuudeksi alla maunitu: taysivaltaiset edustajat ovat allekirjoittaneet taman yleissopimuksen.

Til bekræftelse heraf har undertegnede befuldmægtigede ombud undertegnet denna konvention.

Hecho en Bruselas, el veintiseis de julio de mil novecientos noventa y cinco, en un ejemplar único, en lenguas alemana, inglesa, danesa, española, finesa, francesa, griega, gaélica, italiana, neerlandesa, portuguesa y sueca, cuyos textos son igualmente auténticos y que será depositado en los archivos de la Secretaría General del Consejo de la Unión Europea.

Udfærdiget i Bruxelles den seksogtyvende juli nitten hundrede og femoghalvfems, i ét eksemplar på dansk, engelsk, finsk, fransk, græsk, irsk, italiensk, nederlandsk, portugisisk, spansk, svensk og tysk, hvilke tekster alle har samme gyldighed, og deponeres i arkiverne i Generalsekretariatet for Rådet for Den Europæiske Union.

Geschehen zu Brüssel am sechsundzwanzigsten Juli neunzehnhundertfundneunzig in einer Urschrift in dänischer, deutscher, englischer, finnischer, französischer, griechischer, irischer, italienischer, niederländischer, portugiesischer, schwedischer und spanischer Sprache, wobei jeder Wortlaut gleichermaßen verbindlich ist; die Urschrift wird im Archiv des Generalsekretariats des Rates der Europäischen Union hinterlegt.

Έγινε στις Βρυξέλλες, στις είκοσι έξι Ιουλίου χίλια εννιακόσια ενενήντα πέντε, σε ένα μόνο αντίτυπο, στην αγγλική, γαλλική, γερμανική, δανική, ελληνική, ιρλανδική, ισπανική, ιταλική, ολλανδική, πορτογαλική, σουηδική και φινλανδική γλώσσα, όλα δε τα κείμενα είναι εξίσου αυθεντικά και κατατίθενται στα αρχεία της Γενικής Γραμματείας του Συμβουλίου της Ευρωπαϊκής Ένωσης.

Done at Brussels on the twenty-sixth day of July in the year one thousand nine hundred and ninety-five in a single original, in the Danish, Dutch, English, Finnish, French, German, Greek, Irish, Italian, Portuguese, Spanish and Swedish languages, each text being equally authentic, such original remaining deposited in the archives of the General Secretariat of the Council of the European Union.

Fait à Bruxelles, le vingt-six juillet mil neuf cent quatre-vingt-quinze, en un exemplaire unique, en langues allemande, anglaise, danoise, espagnole, finnoise, française, grecque, irlandaise, italienne, néerlandaise, portugaise et suédoise, tous ces textes faisant également foi, exemplaire qui est déposé dans les archives du Secrétariat général du Conseil de l'Union européenne.

Arna dhéanamh sa Bhrúisil, an seú lá is fiche de lúil sa bhliain míle naoi gcéad nócha a cúig, i scríbhinn bhunaidh amháin sa Bhéarla, sa Danmhairgis, san Fhionlainnis, sa Fhraincis, sa Ghaeilge, sa Ghearmáinis, sa Ghreigis, san Iodáilis, san Ollainnis, sa Phortaingéilis, sa Spáinnis agus sa tSualainnis agus comhdáras ag na téacsanna i ngach ceann de na teangacha sin; déantar an scríbhinn bhunaidh sin a thaisceadh i gcartlann Ardrúnaocht Chomhairle an Aontais Iorpaigh.

Fatto a Bruxelles, addi ventisei luglio millenovecentonovantacinque, in unico esemplare in lingua danese, finlandese, francese, greca, inglese, irlandese, italiana, olandese, portoghese, spagnola, svedese e tedesca, i testi di ciascuna di queste lingue facenti ugualmente fede, esemplare depositato negli archivi del segretariato generale dell'Unione europea.

Gedaan te Brussel, de zesentwintigste juli negentienhonderd vijfennegentig, in één exemplaar, in de Deense, de Duitse, de Engelse, de Finse, de Franse, de Griekse, de Ierse, de Italiaanse, de Nederlandse, de Portugese, de Spaanse en de Zweedse taal, zijnde alle teksten gelijkelijk authentiek, dat wordt neergelegd in het archief van het Secretariaat-generaal van de Raad van de Europese Unie.

Feito em Bruxelas, em vinte e seis de Julho de mil novecentos e noventa e cinco, em exemplar unico, nas linguas alemã, dinamarquesa, espanhola, finlandesa, francesa, grega, inglesa, irlandesa, italiana, neerlandesa, portuguesa e sueca, fazendo igualmente fé todos os textos, depositado nos arquivos do Secretariado-Geral do Conselho da União Europeia.

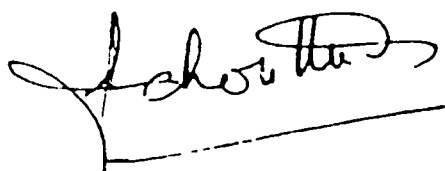
Tehdy Brysselissa kahdentenäkymentenäkuudentenä päivänä heinäkuuta vuonna tuhatyhdeksänkymmentäkymmentäviisi yhtenä ainoana kappaleena englannin, espanjan, hollannin, irin, italian, kreikan, portugalin, ranskan, ruotsin, saksan, suomen ja tanskan kielellä kaikkien näiden tekstien ollessa yhtä todistusvoimaiset, ja se talletetaan Euroopan unionin neuvoston pääsihteeriston arkistoon.

Uttardad i Bryssel den tjugosjätte juli nittonhundra nittofem i ett enda exemplar, på danska, engelska, finska, franska, grekiska, irländska, italienska, nederländska, portugisiska, spanska, svenska och tyska, varvid alla texter är lika giltiga, och deponerad i arkiven vid generalsekretariatet för Europeiska unionens råd.

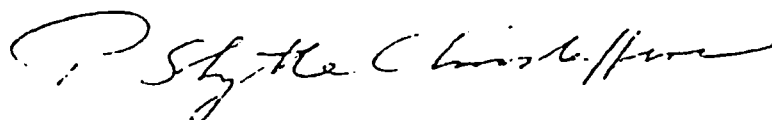
Pour le gouvernement du royaume de Belgique

Voor de Regering van het Koninkrijk België

Für die Regierung des Königreichs Belgien



For regeringen for Kongeriget Danmark



27. 11. 95

EN

Official Journal of the European Communities

No C 316/27

Für die Regierung der Bundesrepublik Deutschland

Για την κυβέρνηση της Ελληνικής Δημοκρατίας

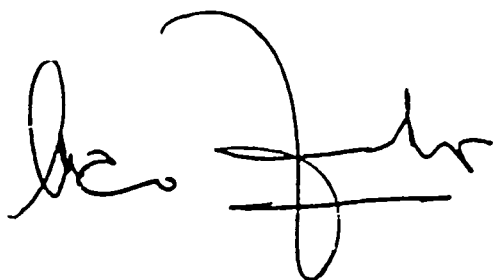
Por el Gobierno del Reino de España

Pour le gouvernement de la République française

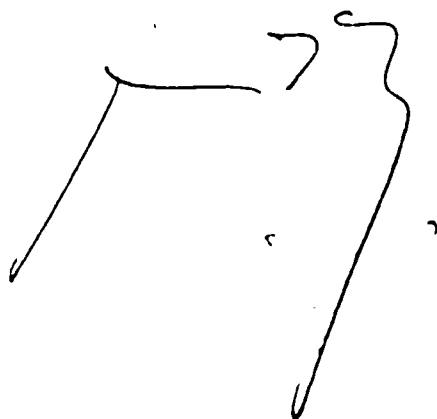
Thar ceann Rialtas na hÉireann

For the Government of Ireland


Per il governo della Repubblica italiana



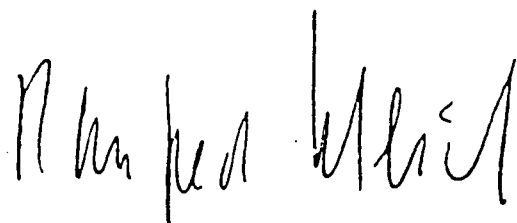
Pour le gouvernement du grand-duché de Luxembourg



Voor de Regering van het Koninkrijk der Nederlanden



Für die Regierung der Republik Österreich



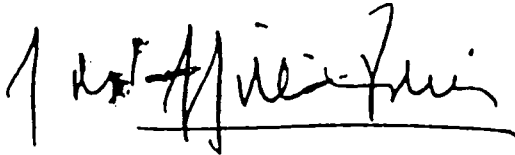
27. 11. 95

EN

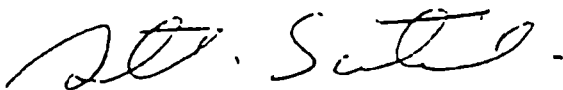
Official Journal of the European Communities

No C 316/29

Pelo Governo da República Portuguesa



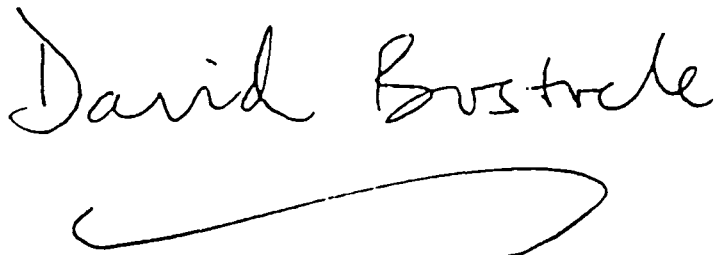
Suomen hallituksen puolesta



På svenska regeringens vägnar



For the Government of the United Kingdom of Great Britain and Northern Ireland



—

ANNEX

Referred to in Article 2

List of other serious forms of international crime which Europol could deal with in addition to those already provided for in Article 2 (2) in compliance with Europol's objective as set out in Article 2 (1).

Against life, limb or personal freedom:

- murder, grievous bodily injury
- illicit trade in human organs and tissue
- kidnapping, illegal restraint and hostage-taking
- racism and xenophobia

Against property or public goods including fraud:

- organized robbery
- illicit trafficking in cultural goods, including antiquities and works of art
- swindling and fraud
- racketeering and extortion
- counterfeiting and product piracy
- forgery of administrative documents and trafficking therein
- forgery of money and means of payment
- computer crime
- corruption

Illegal trading and harm to the environment:

- illicit trafficking in arms, ammunition and explosives
- illicit trafficking in endangered animal species
- illicit trafficking in endangered plant species and varieties
- environmental crime
- illicit trafficking in hormonal substances and other growth promoters

In addition, in accordance with Article 2 (2), the act of instructing Europol to deal with one of the forms of crime listed above implies that it is also competent to deal with the related money-laundering activities and the related criminal offences.

With regard to the forms of crime listed in Article 2 (2) for the purposes of this Convention:

- 'crime connected with nuclear and radioactive substances' means the criminal offences listed in Article 7 (1) of the Convention on the Physical Protection of Nuclear Material, signed at Vienna and New York on 3 March 1980, and relating to the nuclear and/or radioactive materials defined in Article 197 of the Euratom Treaty and Directive 80/836 Euratom of 15 July 1980,
- 'illegal immigrant smuggling' means activities intended deliberately to facilitate, for financial gain, the entry into, residence or employment in the territory of the Member States of the European Union, contrary to the rules and conditions applicable in the Member States,
- 'traffic in human beings' means subjection of a person to the real and illegal sway of other persons by using violence or menaces or by abuse of authority or intrigue with a view to the exploitation of prostitution, forms of sexual exploitation and assault of minors or trade in abandoned children,

-
- 'motor vehicle crime' means the theft or misappropriation of motor vehicles, lorries, semi-trailers, the loads of lorries or semi-trailers, buses, motorcycles, caravans and agricultural vehicles, works vehicles, and the spare parts for such vehicles, and the receiving and concealing of such objects,
 - 'illegal money-laundering activities' means the criminal offences listed in Article 6 (1) to (3) of the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, signed at Strasbourg on 8 November 1990.

The forms of crime referred to in Article 2 and in this Annex shall be assessed by the competent national authorities in accordance with the national law of the Member States to which they belong.

Declaration*Article 40 (2)*

The following Member States agree that in such cases they will systematically submit the dispute in question to the Court of Justice of the European Communities:

- Kingdom of Belgium,
 - Kingdom of Denmark,
 - Federal Republic of Germany,
 - Hellenic Republic,
 - Kingdom of Spain,
 - French Republic,
 - Ireland,
 - Italian Republic,
 - Grand Duchy of Luxembourg,
 - Kingdom of the Netherlands,
 - Republic of Austria,
 - Portuguese Republic,
 - Republic of Finland,
 - Kingdom of Sweden.
-

(Acts adopted pursuant to Title VI of the Treaty on European Union)

COUNCIL ACT

of 23 July 1996

drawing up, on the basis of Article K.3 of the Treaty on European Union, the Protocol on the interpretation, by way of preliminary rulings, by the Court of Justice of the European Communities of the Convention on the establishment of a European Police Office

(96/C 299/01)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article K.3 (2) (c) thereof,

Whereas Article K.3 (2) (c) provides that conventions drawn up on the basis of Article K.3 of the Treaty on European Union may stipulate that the Court of Justice shall have jurisdiction to interpret their provisions and to rule on any disputes regarding their application in accordance with such arrangements as they may lay down,

HAS DECIDED on the drawing up of the Protocol the text of which is annexed, which will be signed on 24 July 1996 by the Representatives of the Governments of the Member States of the European Union,

RECOMMENDS that it be adopted by the Member States in accordance with their respective constitutional requirements.

Done at Brussels, 23 July 1996.

For the Council

The President

I. YATES

ANNEX

PROTOCOL

drawn up on the basis of Article K.3 of the Treaty on European Union, on the interpretation, by way of preliminary rulings, by the Court of Justice of the European Communities of the Convention on the establishment of a European Police Office

THE HIGH CONTRACTING PARTIES,

HAVE AGREED on the following provisions, which shall be annexed to the Convention:

Article 1

The Court of Justice of the European Communities shall have jurisdiction, under the conditions laid down in this Protocol, to give preliminary rulings on the interpretation of the Convention on the establishment of a European Police Office, hereinafter referred to as 'the Europol Convention'.

Article 2

1. By a declaration made at the time of the signing of this Protocol or at any time thereafter, any Member State shall be able to accept the jurisdiction of the Court of Justice of the European Communities to give preliminary rulings on the interpretation of the Europol Convention under the conditions specified in either paragraph 2 (a) or (b).

2. A Member State making a declaration under paragraph 1 may specify that either:

(a) any court or tribunal of that State against whose decisions there is no judicial remedy under national law may request the Court of Justice of the European Communities to give a preliminary ruling on a question raised in a case pending before it and concerning the interpretation of the Europol Convention if that court or tribunal considers that a decision on the question is necessary to enable it to give judgment;

or

(b) any court or tribunal of that State may request the Court of Justice of the European Communities to give a preliminary ruling on a question raised in a case pending before it and concerning the interpretation of the Europol Convention if that court or tribunal considers that a decision on the question is necessary to enable it to give judgment.

Article 3

1. The Protocol on the Statute of the Court of Justice of the European Communities and the Rules of Procedure of that Court of Justice shall apply.

2. In accordance with the Statute of the Court of Justice of the European Communities, any Member State, whether or not it has made a declaration pursuant to Article 2, shall be entitled to submit statements of case or written observations to the Court of Justice of the European Communities in cases which arise under Article 1.

Article 4

1. This Protocol shall be subject to adoption by the Member States in accordance with their respective constitutional requirements.

2. Member States shall notify the depositary of the completion of their respective constitutional requirements for adopting this Protocol and communicate to him any declaration made pursuant to Article 2.

3. This Protocol shall enter into force 90 days after the notification, referred to in paragraph 2, by the Member State which, being a member of the European Union on the date of adoption by the Council of the act drawing up this Protocol, is the last to fulfil that formality. However, it shall at the earliest enter into force at the same time as the Europol Convention.

Article 5

1. This Protocol shall be open to accession by any State that becomes a member of the European Union.

2. Instruments of accession shall be deposited with the depositary.

3. The text of this Protocol in the language of the acceding State, drawn up by the Council of the European Union, shall be authentic.

4. This Protocol shall enter into force with respect to any State that accedes to it 90 days after the date of deposit of its instrument of accession, or on the date of

the entry into force of this Protocol if the latter has not yet come into force when the said period of 90 days expires.

Article 6

Any State that becomes a member of the European Union and accedes to the Europol Convention in accordance with Article 46 thereof shall accept the provisions of this Protocol.

Article 7

1. Amendments to this Protocol may be proposed by any Member State, being a High Contracting Party. Any proposal for an amendment shall be sent to the depositary, who shall forward it to the Council.

2. Amendments shall be established by the Council, which shall recommend that they be adopted by the Member States in accordance with their respective constitutional requirements.

3. Amendments thus established shall enter into force in accordance with the provisions of Article 4.

Article 8

1. The Secretary-General of the Council of the European Union shall act as depositary of this Protocol.

2. The depositary shall publish in the *Official Journal of the European Communities* the notifications, instruments or communications concerning this Protocol.

En fe de lo cual, los plenipotenciarios abajo firmantes suscriben el presente Protocolo.

Til bekræftelse heraf har undertegnede befuldmægtigede underskrevet denne protokol.

Zu Urkund dessen haben die unterzeichneten Bevollmächtigten ihre Unterschriften unter dieses Protokoll gesetzt.

Σε πίστωση των ανωτέρω, οι υπογράφωντες πληρεξούσιοι έθεσαν την υπογραφή τους κάτω από το παρόν πρωτόκολλο.

In witness whereof the undersigned Plenipotentiaries have signed this Protocol.

En foi de quoi, les plénipotentiaires soussignés ont apposé leur signature au bas du présent protocole.

Dá fhianú sin, chuir na Lánchumhachtaigh thíos-sínte a lámh leis an bPrótocal seo.

In fede di che i plenipotenziari sottoscritti hanno apposto le loro firme in calce al presente Protocollo.

Ten blijke waarvan de ondergetekende gevolmachtigden hun handtekening onder dit Protocol hebben gesteld.

Em fé do que, os plenipotenciários abaixo assinados apuseram as suas assinaturas no final do presente protocolo.

Tämän vakuudeksi alla mainitut täysivaltaiset edustajat ovat allekirjoittaneet tämän pöytäkirjan.

Till bevis på detta har undertecknade befullmäktigade ombud undertecknat detta fördrag.

Hecho en un único ejemplar, en lenguas alemana, danesa, española, finesa, francesa, griega, inglesa, irlandesa, italiana, neerlandesa, portuguesa y sueca, siendo cada uno de estos textos igualmente auténtico.

Udfærdiget i ét eksemplar på dansk, engelsk, finsk, fransk, græsk, irsk, italiensk, nederlandsk, portugisisk, spansk, svensk og tysk, hvilke tolv tekster har samme gyldighed.

Abgefaßt in einer Urschrift in dänischer, deutscher, englischer, finnischer, französischer, griechischer, irischer, italienischer, niederländischer, portugiesischer, schwedischer und spanischer Sprache, wobei jeder Wortlaut.

Έγινε σε ένα μόνο αντίγραφο, στην αγγλική, γερμανική, γαλλική, δανική, ελληνική, ισπανική, ιταλική, ολλανδική, πορτογαλική, σουηδική και γινλανδική γλώσσα. Όλα τα κείμενα είναι εξίσου αυθεντικά.

Done in a single original in the Danish, Dutch, English, Finnish, French, German, Greek, Irish, Italian, Portuguese, Spanish and Swedish languages, each text being equally authentic.

Fut en un exemplaire unique, en langues allemande, anglaise, danoise, espagnole, finnoise, française, grecque, irlandaise, italienne, néerlandaise, portugaise et suédoise, chaque texte faisant également foi.

Arna dhéanamh i scríbhinn bhunaidh amháin sa Bhéarla, sa Danmhairgis, san Fhionlainnis, sa Fhraincis, sa Ghaeilge, sa Ghearmáinis, sa Ghréigis, san Iodáilis, san Ollainnis, sa Phortaingéilis, sa Spáinnis agus sa tSualainnis, agus comhúdarás ag gach ceann de na téacsanna sin.

Fatto in unico esemplare in lingua danese, finlandese, francese, greca, inglese, irlandese, italiana, olandese, portoghese, spagnola, svedese e tedesca, ciascun testo facente ugualmente fede.

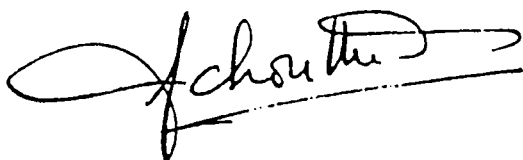
Gedaan in één exemplaar in de Deense, de Duitse, de Engelse, de Finse, de Franse, de Griekse, de Ierse, de Italiaanse, de Nederlandse, de Portugese, de Spaanse en de Zweedse taal, zijnde elks der teksten gelijkelijk authentiek.

Feito em exemplar único, nas linguas alemã, dinamarquesa, espanhola, finlandesa, francesa, grega, inglesa, irlandesa, italiana, neerlandesa, portuguesa e sueca, fazendo igualmente fé todos os textos.

Tehdy englannin-, espanjan-, hollannin-, irin-, italian-, kreikan-, portugalin-, ranskan-, ruotsin-, saksan-, suomen- ja tanskankielisenä, ja jokainen teksti on yhtä todistusvoimainen.

Utfärdat i ett enda exemplar på danska, engelska, finska, franska, grekiska, iriska, italienska, nederländska, portugisiska, spanska, svenska och tyska språken, vilka texter är lika giltiga.

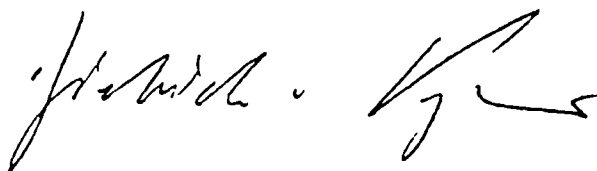
Pour le gouvernement du Royaume de Belgique
Voor de Regering van het Koninkrijk België
Für die Regierung des Königreichs Belgien



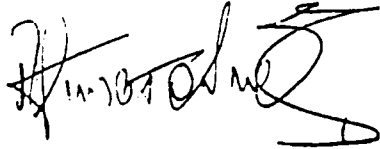
For regeringen for Kongeriget Danmark



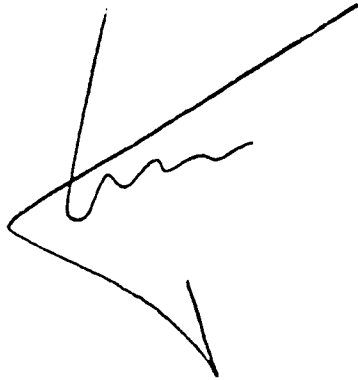
Für die Regierung der Bundesrepublik Deutschland



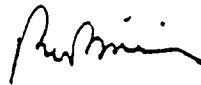
Για την Κυβέρνηση της Ελληνικής Δημοκρατίας



Por el Gobierno del Reino de España



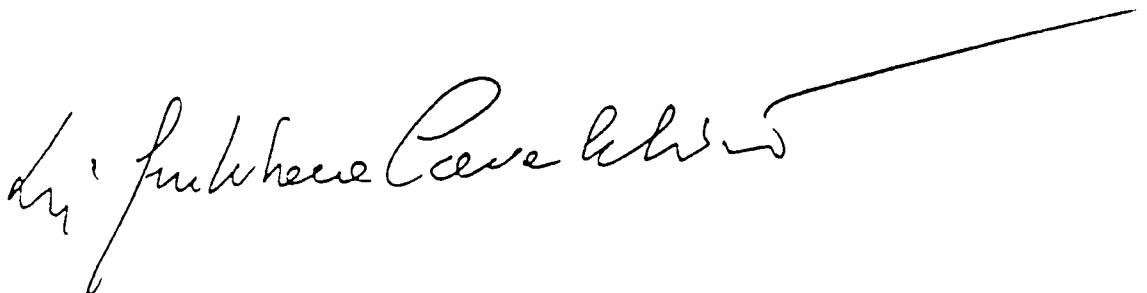
Pour le gouvernement de la République française



Thar ceann Rialtas na hÉireann
For the Government of Ireland



Per il Governo della Repubblica italiana



9. 10. 96

EN

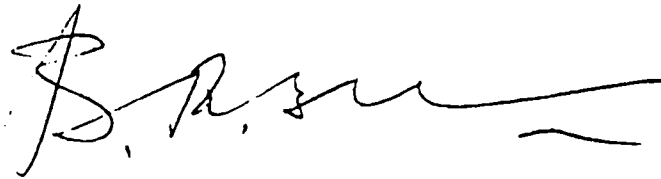
Official Journal of the European Communities

No C 299/7

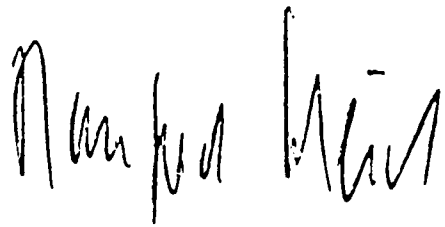
Pour le gouvernement du Grand-Duché de Luxembourg



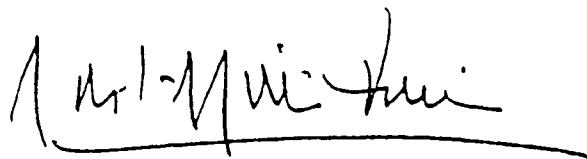
Voor de Regering van het Koninkrijk der Nederlanden



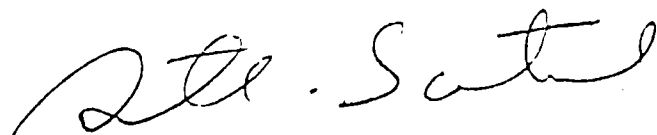
Für die Regierung der Republik Österreich



Pelo Governo da República Portuguesa



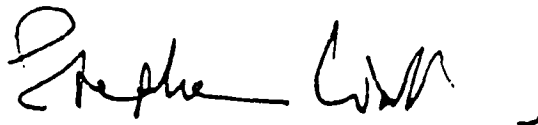
Suomen hallituksen puolesta



På svenska regeringens vägnar



For the Government of the United Kingdom of Great Britain and Northern Ireland



DECLARATION

concerning the simultaneous adoption of the Convention on the establishment of a European Police Office and the Protocol on the interpretation by way of preliminary rulings, by the Court of Justice of the European Communities, of that Convention

The Representatives of the Governments of the Member States of the European Union meeting within the Council,

At the time of the signing of the Council act drawing up the Protocol on the interpretation, by way of preliminary rulings, by the Court of Justice of the European Communities of the Convention on the establishment of a European Police Office,

Wishing to ensure that the said Convention is interpreted as effectively and uniformly as possible as from its entry into force,

Declare themselves willing to take appropriate steps to ensure that the national procedures for adopting the Convention on the establishment of a European Police Office and the Protocol concerning its interpretation are completed simultaneously at the earliest opportunity.

En fe de lo cual, los plenipotenciarios abajo firmantes firman la presente declaración.

Til bekræftelse heraf har undertegnede befuldmægtigede underskrevet denne erklæring.

Zu Urkund dessen haben die unterzeichneten Bevollmächtigten ihre Unterschriften unter diese Erklärung gesetzt.

Σε πίστωση των ανωτέρω, οι υπογράφοντες πληρεξούσιοι έθεσαν την υπογραφή τους κάτω από την παρούσα δήλωση.

In witness whereof the undersigned Plenipotentiaries have signed this Declaration.

En foi de quoi, les plénipotentiaires soussignés ont apposé leurs signatures au bas de la présente déclaration.

Dá fhianú sin, chuir na Lámhachtaigh thíos-sínithe a lámh leis an Dearbhú seo.

In fede di che i plenipotenziari sottoscritti hanno apposto le loro firme in calce alla presente dichiarazione.

Ten blijke waarvan de ondergetekende gevolmachtigden hun handtekening onder deze Verklaring hebben gesteld.

En fe do que, os plenipotenciários abaixo assinados apuseram as respectivas assinaturas no final da presente declaração.

Tämän vakuudeksi alla mainitut täysivaltaiset edustajat ovat allekirjoittaneet tämän julistuksen.

Till bevis på detta har undertecknade befullmäktigade ombud undertecknat denna förklaring.

Pour le gouvernement du Royaume de Belgique
Voor de Regering van het Koninkrijk België
Für die Regierung des Königreichs Belgien

For regeringen for Kongeriget Danmark

Für die Regierung der Bundesrepublik Deutschland

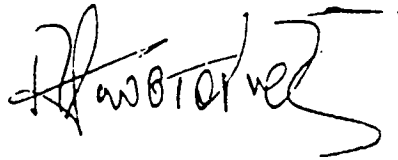
9. 10. 96

EN

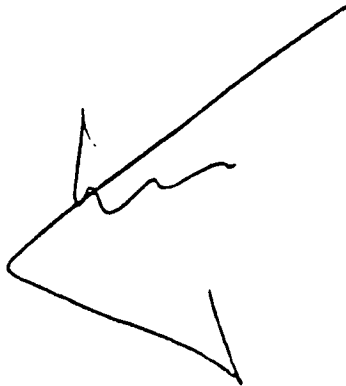
Official Journal of the European Communities

No C 299/11

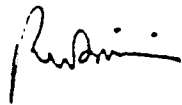
Για την Κυβέρνηση της Ελληνικής Δημοκρατίας



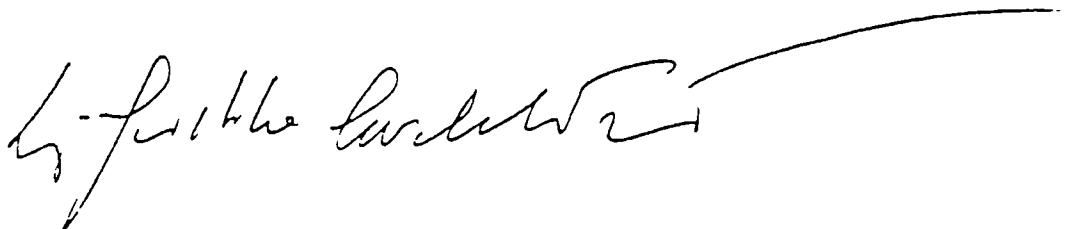
Por el Gobierno del Reino de España



Pour le gouvernement de la République française


Thar ceann Rialtas na hÉireann
For the Government of Ireland


Per il Governo della Repubblica italiana



Pour le gouvernement du Grand-Duché de Luxembourg

Voor de Regering van het Koninkrijk der Nederlanden

Für die Regierung der Republik Österreich

Pelo Governo da República Portuguesa

Suomen hallituksen puolesta

9. 10. 96

EN

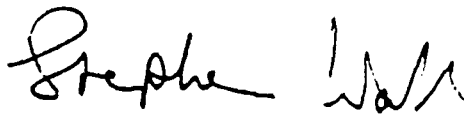
Official Journal of the European Communities

No C 299/13

På svenska regeringens vägnar

A handwritten signature in black ink, appearing to read "John Major". The signature is fluid and cursive, with a long horizontal stroke at the end.

For the Government of the United Kingdom of Great Britain and Northern Ireland

A handwritten signature in black ink, appearing to read "Stephen Wall". The signature is cursive and somewhat stylized, with a period at the end.

Declarations made pursuant to Article 2

At the time of the signing of this Protocol, the following declared that they accepted the jurisdiction of the Court of Justice of the European Communities in accordance with the procedures laid down in Article 2.

The French Republic and Ireland in accordance with the procedures laid down in Article 2 paragraph 2 (a);

The Kingdom of Belgium, the Federal Republic of Germany, the Hellenic Republic, the Italian Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands, the Republic of Austria, the Portuguese Republic and the Republic of Finland in accordance with the procedures laid down in Article 2 paragraph 2 (b).

DECLARATIONS

The Kingdom of Belgium, the Federal Republic of Germany, the Hellenic Republic, the Italian Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands, the Republic of Austria and the Portuguese Republic reserve the right to make provision in their national law to the effect that, where a question relating to the interpretation of the Europol Convention is raised in a case pending before a national court or tribunal against whose decision there is no judicial remedy under national law, that court or tribunal will be required to refer the matter to the Court of Justice.

For the Kingdom of Sweden, the declaration(s) will be made in the autumn of 1996; for the Kingdom of Denmark and the Kingdom of Spain, the declaration(s) will be made at the time of adoption.

The Governments of Belgium, the Netherlands and Luxembourg once again draw attention to the need to arrive as soon as possible at a solution similar to that provided for under this Protocol regarding the jurisdiction to be assigned to the Court of Justice of the European Communities for the interpretation of the Convention on the use of information technology for customs purposes and the Convention on the protection of the communities' financial interests.

In accordance with its position on the assignment of jurisdiction to the Court of Justice of the European Communities in acts concluded under Title VI of the Treaty on European Union, the Italian Government considers that a solution similar to that provided for under this Protocol should be adopted for the Convention on the use of information technology for customs purposes and the Convention on the protection of the communities' financial interests.

Friday, 19 May 1995

7. Europol

B4-0732/95

Resolution on the Europol Convention

The European Parliament,

- having regard to the second paragraph of Article K.6 of the Treaty on European Union,
 - having regard to the Council press release concerning the meeting of the Ministers of Justice and Home Affairs of 9 and 10 March 1995, and in particular its conclusions regarding the Europol Convention,
 - having regard to its resolution of 13 December 1994 on the progress made during 1994 in the implementation of cooperation in the fields of justice and home affairs pursuant to Title VI of the Treaty on European Union⁽¹⁾,
 - having regard to its resolution of 20 January 1994 on participation by the European Parliament in international agreements by the Member States and the Union on cooperation in the fields of justice and home affairs⁽²⁾,
- A. whereas the Europol Convention, according to the declarations of intent made at the Essen European Council in December 1994, is supposed to be adopted in the first half of 1995,
- B. whereas cooperation between the European Parliament and the Council in the context of Title VI of the Treaty on European Union requires detailed crystallization and clarification,
- C. whereas the testing of forms of cooperation between the European Parliament and the Council outside the formal legislative procedure may provide valuable insights for the updating of the Treaty on European Union,
- D. whereas, in the context of cooperation between Member States, Parliament will increasingly have to assume parliamentary scrutiny functions,
- E. whereas Parliament's right to be involved, particularly with Council agreements, must be established or strengthened,
- F. whereas Parliament's right to be involved may add a significant dimension to parliamentary scrutiny by the national parliaments,
1. Confirms that the drafting of the Europol Convention is one of the 'principal aspects of activities' provided for in the second paragraph of Article K.6 of the TEU;
 2. Considers, accordingly, that the Council Presidency must consult the European Parliament on the Europol Convention in accordance with the second paragraph of Article K.6 of the TEU;
 3. Emphasizes its right for its views to be duly taken into consideration in the context of consultation pursuant to the second paragraph of Article K.6 of the TEU,
 4. Takes the view that the Council must satisfy the requirement duly to take the views of the European Parliament into consideration pursuant to the second paragraph of Article K.6 of the TEU either by accepting the European Parliament's views or by giving detailed reasons for their rejection;
 5. Considers, consequently, that consultation of the European Parliament on the draft Europol Convention must take place sufficiently in advance of the Council's deliberations to enable the European Parliament's views to be incorporated in the Council's final decision;

⁽¹⁾ OJ C 18, 23.1.1995, p. 39.

⁽²⁾ OJ C 44, 14.2.1994, p. 180.

19. 6. 95

EN

Official Journal of the European Communities

No C 151/377

Friday, 19 May 1995

6. Considers that, if consultation of the European Parliament is to have any meaning, it must be preceded by the provision to Parliament of comprehensive information in good time about the object of the consultation, as laid down in the first paragraph of Article K.6 of the TEU;
 7. Calls on the Council to furnish it forthwith with comprehensive information about the stage reached in negotiations on the draft Europol Convention and to lay that draft before it;
 8. Instructs its President to forward this resolution to the Council.
-

A4-0061/96

Resolution on Europol

The European Parliament,

- having regard to Article K.1(9), Article K.3(2) and Article K.6, second paragraph, of the Treaty on European Union,
 - having regard to the Declaration on police cooperation annexed to the Final Act of the Treaty on European Union,
 - having regard to its resolution of 22 January 1993 on the setting up of Europol¹,
 - having regard to the joint action of 10 March 1995 adopted by the Council on the basis of Article K.3 of the Treaty on European Union concerning the Europol Drugs Unit²,
 - having regard to the report on the activities of the Europol Drugs Unit for 1994 (C4-0094/95),
 - having regard to its resolution of 11 February 1994 on criminal activities in Europe³,
 - having regard to the communication from the Commission to the Council and the European Parliament on the illicit traffic in radioactive substances and nuclear materials (COM(94)0383),
 - having regard to its resolution of 20 January 1994 on participation by the European Parliament in international agreements by the Member States and the Union on cooperation in the fields of justice and home affairs⁴,
 - having regard to its resolution of 19 May 1995 on the Europol Convention⁵,
 - having regard to the Council Act of 26 July 1995 drawing up the Convention, based on Article K.3 of the Treaty on European Union, on the establishment of a European Police Office (Europol Agreement)⁶,
 - having regard to the report of the Committee on Civil Liberties and Internal Affairs and the opinions of the Committee on Economic and Monetary Affairs and Industrial Policy, the Committee on Legal Affairs and Citizens' Rights and the Committee on Budgetary Control (A4-0335/95),
 - having regard to the second report of the Committee on Civil Liberties and Internal Affairs and the opinions of the Committee on Economic and Monetary Affairs and Industrial Policy, the Committee on Legal Affairs and Citizens' Rights and the Committee on Budgetary Control (A4-0061/96),
- A. whereas basic civil liberties in democracies are increasingly threatened by crime,

¹ OJ C 42, 15.2.1993, p. 250.

² OJ L 62, 20.3.1995, p. 1.

³ OJ C 61, 28.2.1994, p. 235.

⁴ OJ C 44, 14.2.1994, p. 180.

⁵ OJ C 151, 19.6.1995, p. 376.

⁶ OJ C 316, 27.11.1995, p. 1.

- B. whereas organised crime on an international scale is something new and threatening and whereas a new approach to fighting it is required,
- C. whereas nowadays criminal forms of profit-making economic activity which mirror legal forms are organized across frontiers, using modern technologies and management methods,
- D. whereas blackmail, corruption and terror may undermine the normal administrative action of the state and hence the democratic decision-making process which characterizes the constitutional state,
- E. whereas one of the effective ways of fighting organized crime operating Europe-wide is through European police forces acting together throughout Europe,
- F. convinced that the agreement of the Member States on the Europol Convention is a necessary albeit insufficient step towards fighting organised crime operating Europe-wide and other serious forms of international crime,
- G. regretting the fact that work on the Europol Convention cost an unwarranted amount of time and effort, during which other important forms of international police cooperation among the Member States were not appropriately pursued and the national governments thus failed in their duties towards their citizens,
- H. whereas in the interests of the effectiveness and efficiency of Europol the competence specified in Article 2 of the Europol Convention should not be extended, for the time being, to include the crimes listed in the annex referred to in Article 2, but rather, after completion of an appropriate initial phase, their transferability should be considered and, if appropriate, decided upon,
- I. convinced that the data protection rules in relation to the processing of personal data in datafiles pursuant to the Council of Europe Agreement of 28 January 1991 and Recommendation No. R (85) 15 of the Committee of Ministers of the Council of Europe of 17 September 1987 represent significant progress towards guaranteeing the right of self-determination in respect of information, and in the expectation that the Member States and Europol will apply the data protection rules of the Europol Convention *mutatis mutandis* to the processing and utilization of data in files,
- J. whereas fundamental rights and freedoms could be seriously at risk from inadequate data protection, and in the expectation that data protection rules (both for databases and files) will be set up prior to the entry into force of the Convention with a view to guaranteeing the right of self-determination in respect of information and that any amendments to the Convention that are needed as a result of future European data protection standards will be made,
- K. convinced that the Europol Convention is one of the 'principal aspects of activities' within the meaning of Article K.6, second paragraph, of the Treaty on European Union,
- L. whereas, therefore, the Presidency should 'consult the European Parliament' on the Europol Convention and 'ensure that the views of the European Parliament are duly taken into consideration', pursuant to Article K.6, second paragraph, of the Treaty on European Union,
- M. whereas the right to be consulted, as enshrined in Article K.6, second paragraph, of the Treaty on European Union, must be respected before a decision is taken on the matter requiring consultation,

- N. convinced as a matter of inescapable logic that only if Parliament is consulted before a decision is taken can its views be duly taken into consideration,
- O. whereas, in accordance with the Treaty on European Union, the European Parliament should have been consulted on the Europol Convention before the final Council decision; whereas the failure to do so contravenes the Treaty,
- P. convinced that there is a need for an interinstitutional agreement to be concluded between the Council and the European Parliament in order to ensure effective implementation of the provisions of Article K.6,
- Q. convinced that crime operating on a cross-border basis should be opposed by, inter alia, a European police force,
- R. convinced that Europol should therefore, at a later date, be given closely defined independent powers of investigation,
- S. convinced that provisional legal protection against acts of Europol should properly be the task of the Court of Justice of the European Communities,
- T. convinced that the exercise of the sovereignty of states is more likely to be diminished by the increase in organised crime than by the cooperation of the national police authorities of the Member States in a European Police Office,
- U. convinced that the information acquired through data-processing pursuant to the Europol Convention will lead to a degree of investigatory independence, for the parliamentary control of which the European Parliament must be given powers of supervision alongside and complementary to those of the Member States' parliaments, and convinced that control over the present activity of the Europol Drugs Unit should involve not only the parliaments of the Member States but also the European Parliament,
- V. concerned that the intensity of preparatory measures and investment to build up the Europol Drugs Unit in preparation for its possible later operation as Europol could create material constraints and undermine Member States' freedom to review the Europol Convention during the ratification procedure,
1. Calls on the parliaments of the Member States
 - not to embark upon ratification of the Europol Convention until powers to give preliminary rulings have been conferred upon the European Court of Justice,
 - to ensure that Europol is able to start work as soon as possible;
 2. Expects, in accordance with the conclusions of the European Council of Cannes, an agreement to be reached no later than the meeting of the European Council in June 1996 on the powers of the Court of Justice of the European Communities regarding requests for preliminary rulings in the event of a legal dispute between a citizen and Europol;
 3. Considers that the ratification procedures in the Member States must be completed before the Council carries out any further work on the implementing provisions pursuant to Article 45(4) of the Europol Convention, which should be deferred until that time;

4. Regards appropriate rules on the processing by Europol of personal data as a necessary component of the ratification procedure and calls on each Member State to take immediate action to include in its national legislation on the processing of personal data in datafiles the measures required to guarantee the data protection standard set out in the Europol Convention; political affiliation, religious persuasion, race, sexual behaviour or any similar personal data or equivalent information may not be registered in Europol's records; expresses, therefore, its total opposition to the contents of a proposal from the Presidency of the Council seeking to record this sort of information and calls on the Council to withdraw its proposal;
5. Calls for substantial improvements in the protection of personal data, and in particular for an extension of the right of individuals to be informed of and to check data concerning them, and for the data protection standards applicable to automated datafiles to be applied as appropriate to the production, use and deletion of data in files;
6. Calls for provision to be made for courts and lawyers to check those data which Europol produces itself in its analytical work;
7. Calls for the time at which data are to be deleted pursuant to Article 8(5) of the Europol Convention to be determined more precisely;
8. Calls on the Council to ensure that the actions of Europol are also subject to investigation by the European Ombudsman;
9. Calls on the Council to consult the European Parliament on the following matters pursuant to Article K.6, second paragraph, of the Treaty on European Union and to give due consideration to its views:
 - the decision to instruct Europol to deal with terrorist activities pursuant to Article 2(2), second subparagraph, of the Europol Convention before the expiry of the period specified therein;
 - the decision to instruct Europol to deal with other forms of crime listed in the annex to the Europol Convention;
 - the implementing rules for data files pursuant to Article 10(1), third subparagraph, of the Europol Convention;
 - the rules to be observed by Europol pursuant to Article 10(4), last sentence, of the Europol Convention;
 - the general rules for the communication of personal data by Europol pursuant to Article 18(2) of the Europol Convention;
 - the activity reports of the joint supervisory body pursuant to Article 24(6) of the Europol Convention,
 - the rules concerning the agreements to be concluded by Europol pursuant to Article 26(3) of the Europol Convention;
 - any decision by the Council on the dismissal of the Director and the Deputy Directors pursuant to Article 29(6) of the Europol Convention;
 - the staff regulations pursuant to Article 30(3) of the Europol Convention;
 - the rules on confidentiality pursuant to Article 31(1) of the Europol Convention;
 - the budget pursuant to Article 35(5) of the Europol Convention;

- the financial regulation pursuant to Article 35(9) of the Europol Convention;
 - the audit report pursuant to Article 36(3) of the Europol Convention;
 - the decision on the discharge pursuant to Article 36(5) of the Europol Convention;
 - disputes between Member States on the interpretation or application of the Convention pursuant to Article 40(1) of the Europol Convention;
 - the protocol on privileges and immunities pursuant to Article 41 of the Europol Convention;
 - amendments to the Convention pursuant to Article 43(1) of the Europol Convention;
 - a decision on the definitions of forms of crime contained in the Annex pursuant to Article 43(3) of the Europol Convention;
10. Calls on the Council to submit to the European Parliament, pursuant to Article K.6, second paragraph, of the Treaty on European Union, the reports to be submitted by the Management Board pursuant to Article 28(10) of the Europol Convention;
 11. Calls for the European Parliament to be consulted - provided all Member States have ratified the Europol Convention - on the appointment of the Director and the Deputy Directors, pursuant to Article 29 of the Europol Convention, and for its views to be duly taken into consideration;
 12. Provided all Member States have ratified the Europol Convention, calls for the special report, which is to be submitted to the European Parliament pursuant to Article 34(1) of the Europol Convention, to be presented by the Director and to reflect not only the current work of Europol but also the activities and decisions of all its bodies;
 13. Expects to be informed - provided all Member States have ratified the Europol Convention - not only on the special report pursuant to Article 34 of the Europol Convention but also of the activities of Europol pursuant to Article K.6, second paragraph of the Treaty on European Union and to be consulted at all times on the principal aspects of Europol's activities;
 14. Calls for the words 'and its opinions shall be duly taken into account' to be inserted in Article 34(1), second sentence, of the Europol Convention;
 15. Calls for the Europol Convention to be reviewed at a later date with a view to examining the transfer to Europol of investigatory powers within the scope of its competences pursuant to Article 2 of the Europol Convention and in accordance with national provisions on the law of criminal procedure;

calls furthermore for operational powers to be given to Europol only if it is subject to the instructions of the European Commission and with such a European Police Office being made accountable to the European Parliament as well as to the national parliaments;

insists that the abovementioned revision should not take place before the power for the Court of Justice of the European Communities to give preliminary rulings is guaranteed;

16. Calls on the Council to ensure that, if the Europol Convention is ratified and Europol becomes fully operational, control over it is ensured and developed by the European Parliament and by national parliaments;
17. Instructs its President to forward this resolution to the Council, the Commission and the governments and parliaments of the Member States.

Annexes

Chapter 6

DUBLIN CONVENTION

Convention determining the state responsible for
examining applications for asylum lodged in one of the
Member States of the EC

HIS MAJESTY THE KING OF THE BELGIANS,

HER MAJESTY THE QUEEN OF DENMARK,

THE PRESIDENT OF THE FEDERAL REPUBLIC OF GERMANY,

THE PRESIDENT OF THE HELLENIC REPUBLIC,

HIS MAJESTY THE KING OF SPAIN,

THE PRESIDENT OF THE FRENCH REPUBLIC,

THE PRESIDENT OF IRELAND,

THE PRESIDENT OF THE ITALIAN REPUBLIC,

HIS ROYAL HIGHNESS THE GRAND DUKE OF LUXEMBOURG,

HER MAJESTY THE QUEEN OF THE NETHERLANDS,

THE PRESIDENT OF THE PORTUGUESE REPUBLIC,

HER MAJESTY THE QUEEN OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN
IRELAND,

HAVING REGARD to the objective, fixed by the European Council meeting in Strasbourg on 8 and 9 December 1989, of the harmonization of their asylum policies:

DETERMINED, in keeping with their common humanitarian tradition, to guarantee adequate protection to refugees in accordance with the terms of the Geneva Convention of 28 July 1951, as amended by the New York Protocol of 31 January 1967 relating to the Status of Refugees, hereinafter referred to as the "Geneva Convention" and the "New York Protocol" respectively;

CONSIDERING the joint objective of an area without internal frontiers in which the free movement of persons shall, in particular, be ensured, in accordance with the provisions of the Treaty establishing the European Economic Community, as amended by the Single European Act;

AWARE of the need, in pursuit of this objective, to take measures to avoid any situations arising, with the result that applicants for asylum are left in doubt for too long as regards the likely outcome of their applications and concerned to provide all applicants for asylum with a guarantee that their applications will be examined by one of the Member States and to ensure that applicants for asylum are not referred successively from one Member State to another without any of these States acknowledging itself to be competent to examine the application for asylum;

DESIRING to continue the dialogue with the United Nations High Commissioner for Refugees in order to achieve the above objectives;

DETERMINED to co-operate closely in the application of this Convention through various means, including exchanges of information,

HAVE DECIDED TO CONCLUDE THIS CONVENTION AND TO THIS END HAVE DESIGNATED AS THEIR PLENIPOTENTIARIES:

HIS MAJESTY THE KING OF THE BELGIANS,

Melchior WATHELET

Deputy Prime Minister, Minister for Justice, Small and Medium-sized Businesses and the Self-Employed

HER MAJESTY THE QUEEN OF DENMARK,

THE PRESIDENT OF THE FEDERAL REPUBLIC OF GERMANY,

Dr Helmut RÜCKRIEGEL

Ambassador of the Federal Republic of Germany at Dublin

Wolfgang SCHÄUBLE

Federal Minister for the Interior

THE PRESIDENT OF THE HELLENIC REPUBLIC,

Ioannis VASSILIADES

Minister for Public Order

HIS MAJESTY THE KING OF SPAIN,

José Luis CORCUERA

Minister for the Interior

THE PRESIDENT OF THE FRENCH REPUBLIC,

Pierre JOXE

Minister for the Interior

THE PRESIDENT OF IRELAND,

Ray BURKE

Minister for Justice and Minister for Communications

THE PRESIDENT OF THE ITALIAN REPUBLIC,

Antonio GAVA

Minister for the Interior

HIS ROYAL HIGHNESS THE GRAND DUKE OF LUXEMBOURG,

Marc FISCHBACH

Minister for Education, Minister for Justice,
Minister for the Civil Service

HER MAJESTY THE QUEEN OF THE NETHERLANDS,

Ernst Maurits Henricus HIRSCH BALLIN

Minister for Justice and Minister for matters
concerning the Netherlands Antilles and Aruba

THE PRESIDENT OF THE PORTUGUESE REPUBLIC,

Manuel PEREIRA

Minister for the Interior

HER MAJESTY THE QUEEN OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND,

David WADDINGTON

Secretary of State for the Home Department (Home Secretary)

Nicholas Maxted FENN, KCMG

Ambassador of the United Kingdom of Great Britain and Northern Ireland
at Dublin

WHO, having exchanged their Full Powers, found in good and due form,

HAVE AGREED AS FOLLOWS:

ARTICLE 1

1. For the purposes of this Convention:

- (a) Alien means: any person other than a national of a Member State;
- (b) Application for asylum means: a request whereby an alien seeks from a Member State protection under the Geneva Convention by claiming refugee status within the meaning of Article 1 of the Geneva Convention, as amended by the New York Protocol;
- (c) Applicant for asylum means: an alien who has made an application for asylum in respect of which a final decision has not yet been taken;

- (d) Examination of an application for asylum means: all the measures for examination, decisions or rulings given by the competent authorities on an application for asylum, except for procedures to determine the State responsible for examining the application for asylum pursuant to this Convention;
- (e) Residence permit means: any authorization issued by the authorities of a Member State authorizing an alien to stay in its territory, with the exception of visas and "stay permits" issued during examination of an application for a residence permit or for asylum;
- (f) Entry visa means: authorization or decision by a Member State to enable an alien to enter its territory, subject to the other entry conditions being fulfilled;
- (g) Transit visa means: authorization or decision by a Member State to enable an alien to transit through its territory or pass through the transit zone of a port or airport, subject to the other transit conditions being fulfilled.
2. The nature of the visa shall be assessed in the light of the definitions set out in paragraph 1, points (f) and (g).

ARTICLE 2

The Member States reaffirm their obligations under the Geneva Convention, as amended by the New York Protocol, with no geographic restriction of the scope of these instruments, and their commitment to co-operating with the services of the United Nations High Commissioner for Refugees in applying these instruments.

ARTICLE 3

1. Member States undertake to examine the application of any alien who applies at the border or in their territory to any one of them for asylum.
2. That application shall be examined by a single Member State, which shall be determined in accordance with the criteria defined in this Convention. The criteria set out in Articles 4 to 8 shall apply in the order in which they appear.
3. That application shall be examined by that State in accordance with its national laws and its international obligations.
4. Each Member State shall have the right to examine an application for asylum submitted to it by an alien, even if such examination is not its responsibility under the criteria defined in this Convention, provided that the applicant for asylum agrees thereto.

The Member State responsible under the above criteria is then relieved of its obligations, which are transferred to the Member State which expressed the wish to examine the application. The latter State shall inform the Member State responsible under the said criteria if the application has been referred to it.

5. Any Member State shall retain the right, pursuant to its national laws, to send an applicant for asylum to a third State, in compliance with the provisions of the Geneva Convention, as amended by the New York Protocol.

6. The process of determining the Member State responsible for examining application for asylum under this Convention shall start as soon as an application for asylum is first lodged with a Member State.

7. An applicant for asylum who is present in another Member State and then lodges an application for asylum after withdrawing his or her application during the process of determining the State responsible shall be taken back under the conditions laid down in Article 13, by the Member State with which that application for asylum was lodged, with a view to completing the process of determining the State responsible for examining the application for asylum.

This obligation shall cease to apply if the applicant for asylum has since left the territory of the Member States for a period of at least three months or has obtained from a Member State a residence permit valid for more than three months.

ARTICLE 4

Where the applicant for asylum has a member of his family who has been recognized as having refugee status within the meaning of the Geneva Convention, as amended by the New York Protocol, in a Member State and is legally resident there, that State shall be responsible for examining the application, provided that the persons concerned so desire.

The family member in question may not be other than the spouse of the applicant for asylum or his or her unmarried child who is a minor of under eighteen years, or his or her father or mother where the applicant for asylum is himself or herself an unmarried child who is a minor of under eighteen years.

ARTICLE 5

1. Where the applicant for asylum is in possession of a valid residence permit, the Member State which issued the permit shall be responsible for examining the application for asylum.
2. Where the applicant for asylum is in possession of a valid visa, the Member State which issued the visa shall be responsible for examining the application for asylum, except in the following situations:
 - (a) if the visa was issued on the written authorization of another Member State, that State shall be responsible for examining the application for asylum. Where a Member State first consults the central authority of another Member State, *inter alia* for security reasons, the agreement of the latter shall not constitute written authorization within the meaning of this provision.
 - (b) where the applicant for asylum is in possession of a transit visa and lodges his application in another Member State in which he is not subject to a visa requirement, that State shall be responsible for examining the application for asylum.

(c) where the applicant for asylum is in possession of a transit visa and lodges his application in the State which issued him or her with the visa and which has received written confirmation from the diplomatic or consular authorities of the Member State of destination that the alien for whom the visa requirement was waived fulfilled the conditions for entry into that State, the latter shall be responsible for examining the application for asylum.

3. Where the applicant for asylum is in possession of more than one valid residence permit or visa issued by different Member States, the responsibility for examining the application for asylum shall be assumed by the Member States in the following order:

- (a) the State which issued the residence permit conferring the right to the longest period of residency or, where the periods of validity of all the permits are identical, the State which issued the residence permit having the latest expiry date;
- (b) the State which issued the visa having the latest expiry date where the various visas are of the same type;
- (c) where visas are of different kinds, the State which issued the visa having the longest period of validity, or where the periods of validity are identical, the State which issued the visa having the latest expiry date. This provision shall not apply where the applicant is in possession of one or more transit visas, issued on presentation of an entry visa for another Member State. In that case, that Member State shall be responsible.

4. Where the applicant for asylum is in possession only of one or more residence permits which have expired less than two years previously or one or more visas which have expired less than six months previously and enabled him or her actually to enter the territory of a Member State, the provisions of paragraphs 1, 2 and 3 of this Article shall apply for such time as the alien has not left the territory of the Member States.

Where the applicant for asylum is in possession of one or more residence permits which have expired more than two years previously or one or more visas which have expired more than six months previously and enabled him or her to enter the territory of a Member State and where an alien has not left Community territory, the Member State in which the application is lodged shall be responsible.

ARTICLE 6

When it can be proved that an applicant for asylum has irregularly crossed the border into a Member State by land, sea or air, having come from a non-member State of the European Communities, the Member State thus entered shall be responsible for examining the application for asylum.

That State shall cease to be responsible, however, if it is proved that the applicant has been living in the Member State where the application for asylum was made at least six months before making his application for asylum. In that case it is the latter Member State which is responsible for examining the application for asylum.

ARTICLE 7

1. The responsibility for examining an application for asylum shall be incumbent upon the Member State responsible for controlling the entry of the alien into the territory of the Member States, except where, after legally entering a Member State in which the need for him or her to have a visa is waived, the alien lodges his or her application for asylum in another Member State in which the need for him or her to have a visa for entry into the territory is also waived. In this case, the latter State shall be responsible for examining the application for asylum.

2. Pending the entry into force of an agreement between Member States on arrangements for crossing external borders, the Member State which authorizes transit without a visa through the transit zone of its airports shall not be regarded as responsible for control on entry, in respect of travellers who do not leave the transit zone.

3. Where the application for asylum is made in transit in an airport of a Member State, that State shall be responsible for examination.

ARTICLE 8

Where no Member State responsible for examining the application for asylum can be designated on the basis of the other criteria listed in this Convention, the first Member State with which the application for asylum is lodged shall be responsible for examining it.

ARTICLE 9

Any Member State, even when it is not responsible under the criteria laid out in this Convention, may, for humanitarian reasons, based in particular on family or cultural grounds, examine an application for asylum at the request of another Member State, provided that the applicant so desires.

If the Member State thus approached accedes to the request, responsibility for examining the application shall be transferred to it.

ARTICLE 10

1. The Member State responsible for examining an application for asylum according to the criteria set out in this Convention shall be obliged to:

- (a) Take charge under the conditions laid down in Article 11 of an applicant who has lodged an application for asylum in a different Member State.
- (b) Complete the examination of the application for asylum.
- (c) Readmit or take back under the conditions laid down in Article 13 an applicant whose application is under examination and who is irregularly in another Member State.
- (d) Take back, under the conditions laid down in Article 13, an applicant who has withdrawn the application under examination and lodged an application in another Member State.
- (e) Take back, under the conditions laid down in Article 13, an alien whose application it has rejected and who is illegally in another Member State.

2. If a Member State issues to the applicant a residence permit valid for more than three months, the obligations specified in paragraph 1, points (a) to (e) shall be transferred to that Member State.

3. The obligations specified in paragraph 1, points (a) to (d) shall cease to apply if the alien concerned has left the territory of the Member States for a period of at least three months.

4. The obligations specified in paragraph 1, points (d) and (e) shall cease to apply if the State responsible for examining the application for asylum, following the withdrawal or rejection of the application, takes and enforces the necessary measures for the alien to return to his country of origin or to another country which he may lawfully enter.

ARTICLE 11

1. If a Member State with which an application for asylum has been lodged considers that another Member State is responsible for examining the application, it may, as quickly as possible and in any case within the six months following the date on which the application was lodged, call upon the other Member State to take charge of the applicant.

If the request that charge be taken is not made within the six-month time limit, responsibility for examining the application for asylum shall rest with the State in which the application was lodged.

2. The request that charge be taken shall contain indications enabling the authorities of that other State to ascertain whether it is responsible on the basis of the criteria laid down in this Convention.

3. The State responsible in accordance with those criteria shall be determined on the basis of the situation obtaining when the applicant for asylum first lodged his application with a Member State.

4. The Member State shall pronounce judgment on the request within three months of receipt of the claim. Failure to act within that period shall be tantamount to accepting the claim.
5. Transfer of the applicant for asylum from the Member State where the application was lodged to the Member State responsible must take place not later than one month after acceptance of the request to take charge or one month after the conclusion of any proceedings initiated by the alien challenging the transfer decision if the proceedings are suspensory.
6. Measures taken under Article 18 may subsequently determine the details of the process by which applicants shall be taken in charge.

ARTICLE 12

Where an application for asylum is lodged with the competent authorities of a Member State by an applicant who is on the territory of another Member State, the determination of the Member State responsible for examining the application for asylum shall be made by the Member State on whose territory the applicant is. The latter Member State shall be informed without delay by the Member State which received the application and shall then, for the purpose of applying this Convention, be regarded as the Member State with which the application for asylum was lodged.

ARTICLE 13

1. An applicant for asylum shall be taken back in the cases provided for in Article 3(7) and in Article 10 as follows:
 - (a) the request for the applicant to be taken back must provide indications enabling the State with which the request is lodged to ascertain that it is responsible in accordance with Article 3(7) and with Article 10;
 - (b) the State called upon to take back the applicant shall give an answer to the request within eight days of the matter being referred to it. Should it acknowledge responsibility, it shall then take back applicant for asylum as quickly as possible and at the latest one month after it agrees to do so.
2. Measures taken under Article 18 may at a later date set out the details of the procedure for taking the applicant back.

ARTICLE 14

1. Member States shall conduct mutual exchanges with regard to:
 - national legislative or regulatory measures or practices applicable in the field of asylum;

- statistical data on monthly arrivals of applicants for asylum, and their breakdown by nationality. Such information shall be forwarded quarterly through the General Secretariat of the Council of the European Communities, which shall see that it is circulated to the Member States and the Commission of the European Communities and to the United Nations High Commissioner for Refugees.

2. The Member States may conduct mutual exchanges with regard to:

- general information on new trends in applications for asylum;
- general information on the situation in the countries of origin or of provenance of applicants for asylum.

3. If the Member State providing the information referred to in paragraph 2 wants it to be kept confidential, the other Member States shall comply with this wish.

ARTICLE 15

1. Each Member State shall communicate to any Member State that so requests such information on individual cases as is necessary for:

- determining the Member State which is responsible for examining the application for asylum;

- examining the application for asylum;
 - implementing any obligation arising under this Convention.
2. This information may only cover:
- personal details of the applicant, and, where appropriate, the members of his family (full name - where appropriate, former name -, nicknames or pseudonyms, nationality - present and former -, date and place of birth);
 - identity and travel papers (references, validity, date of issue, issuing authority, place of issue, etc.);
 - other information necessary for establishing the identity of the applicant;
 - places of residence and routes travelled;
 - residence permits or visas issued by a Member State;
 - the place where the application was lodged;
 - the date any previous application for asylum was lodged, the date the present application was lodged, the stage reached in the proceedings and the decision taken, if any.

3. Furthermore, one Member State may request another Member State to let it know on what grounds the applicant for asylum bases his or her application and, where applicable, the grounds for any decisions taken concerning the applicant. It is for the Member State from which the information is requested to decide whether or not to impart it. In any event, communication of the information requested shall be subject to the approval of the applicant for asylum.

4. This exchange of information shall be effected at the request of a Member State and may only take place between authorities the designation of which by each Member State has been communicated to the Committee provided for under Article 18.

5. The information exchanged may only be used for the purposes set out in paragraph 1. In each Member State such information may only be communicated to the authorities and courts and tribunals entrusted with:

- determining the Member State which is responsible for examining the application for asylum;
- examining the application for asylum;
- implementing any obligation arising under this Convention.

6. The Member State that forwards the information shall ensure that it is accurate and up-to-date.

If it appears that this Member State has supplied information which is inaccurate or which should not have been forwarded, the recipient Member State, shall be immediately informed thereof. They shall be obliged to correct such information or to have it erased.

7. An applicant for asylum shall have the right to receive, on request, the information exchanged concerning him or her, for such time as it remains available.

If he or she establishes that such information is inaccurate or should not have been forwarded, he or she shall have the right to have it corrected or erased. This right shall be exercised in accordance with the conditions laid down in paragraph 6.

8. In each Member State concerned, the forwarding and receipt of exchanged information shall be recorded.

9. Such information shall be kept for a period not exceeding that necessary for the ends for which it was exchanged. The need to keep it shall be examined at the appropriate moment by the Member State concerned.

10. In any event, the information thus communicated shall enjoy at least the same protection as is given to similar information in the Member State which receives it.

11. If data are not processed automatically but are handled in some other form, every Member State shall take the appropriate measures to ensure compliance with this Article by means of effective controls. If a Member State has a monitoring body of the type mentioned in paragraph 12, it may assign the control task to it.

12. If one or more Member State wish to computerize all or part of the information mentioned in paragraphs 2 and 3, such computerization is only possible if the countries concerned have adopted laws applicable to such processing which implement the principles of the Strasbourg Convention of 28 February 1981 for the Protection of Individuals, with regard to Automatic Processing of Personal Data and if they have entrusted an appropriate national body with the independent monitoring of the processing and use of data forwarded pursuant to this Convention.

ARTICLE 16

1. Any Member State may submit to the Committee referred to in Article 18 proposals for revision of this Convention in order to eliminate difficulties in the application thereof.
2. If it proves necessary to revise or amend this Convention pursuant to the achievement of the objectives set out in Article 8a of the Treaty establishing the European Economic Community, such achievement being linked in particular to the establishment of a harmonized asylum and a common visa policy, the Member State holding the Presidency of the Council of the European Communities shall organize a meeting of the Committee referred to in Article 18.
3. Any revision of this Convention or amendment hereto shall be adopted by the Committee referred to in Article 18. They shall enter into force in accordance with the provisions of Article 22.

ARTICLE 17

1. If a Member State experiences major difficulties as a result of a substantial change in the circumstances obtaining on conclusion of this Convention, the State in question may bring the matter before the Committee referred to in Article 18 so that the latter may put to the Member States measures to deal with the situation or adopt such revisions or amendments to this Convention as appear necessary, which shall enter into force as provided for in Article 16(3).

2. If, after six months, the situation mentioned in paragraph 1 still obtains, the Committee, acting in accordance with Article 18(2), may authorize the Member State affected by that change to suspend temporarily the application of the provisions of this Convention, without such suspension being allowed to impede the achievement of the objectives mentioned in Article 8a of the Treaty establishing the European Economic Treaty or contravene other international obligations of the Member States.

3. During the period of suspension, the Committee shall continue its discussions with a view to revising the provisions of this Convention, unless it has already reached an agreement.

ARTICLE 18

1. A Committee shall be set up comprising one representative of the Government of each Member State.

The Committee shall be chaired by the Member State holding the Presidency of the Council of the European Communities.

The Commission of the European Communities may participate in the discussions of the Committee and the working parties referred to in paragraph 4.

2. The Committee shall examine, at the request of one or more Member States, any question of a general nature concerning the application or interpretation of this Convention.

The Committee shall determine the measures referred to in Article 11(6) and Article 13(2) and shall give the authorization referred to in Article 17(2).

The Committee shall adopt decisions revising or amending the Convention pursuant to Articles 16 and 17.

3. The Committee shall take its decisions unanimously, except where it is acting pursuant to Article 17(2), in which case it shall take its decisions by a majority of two-thirds of the votes of its members.

4. The Committee shall determine its rules of procedure and may set up working parties.

The Secretariat of the Committee and of the working parties shall be provided by the General Secretariat of the Council of the European Communities.

ARTICLE 19

As regards the Kingdom of Denmark, the provisions of this Convention shall not apply to the Faroe Islands nor to Greenland unless a declaration to the contrary is made by the Kingdom of Denmark. Such a declaration may be made at any time by a communication to the Government of Ireland which shall inform the Governments of the other Member States thereof.

As regards the French Republic, the provisions of this Convention shall apply only to the European territory of the French Republic.

As regards the Kingdom of the Netherlands, the provisions of this Convention shall apply only to the territory of the Kingdom of the Netherlands in Europe.

As regards the United Kingdom the provisions of this Convention shall apply only to the United Kingdom of Great Britain and Northern Ireland. They shall not apply to the European territories for whose external relations the United Kingdom is responsible unless a declaration to the contrary is made by the United Kingdom. Such a declaration may be made at any time by a communication to the Government of Ireland, which shall inform the Governments of the other Member States thereof.

ARTICLE 20

This Convention shall not be the subject of any reservations.

ARTICLE 21

1. This Convention shall be open for the accession of any State which becomes a member of the European Communities. The instruments of accession will be deposited with the Government of Ireland.

2. It shall enter into force in respect of any State which accedes thereto on the first day of the third month following the deposit of its instrument of accession.

CONV/ASILE/en 26

ARTICLE 22

1. This Convention shall be subject to ratification, acceptance or approval. The instruments of ratification, acceptance or approval shall be deposited with the Government of Ireland.

2. The Government of Ireland shall notify the Governments of the other Member States of the deposit of the instruments of ratification, acceptance or approval.

3. This Convention shall enter into force on the first day of the third month following the deposit of the instrument of ratification, acceptance or approval by the last signatory State to take this step.

The State with which the instruments of ratification, acceptance or approval are deposited shall notify the Member States of the date of entry into force of this Convention.

EN FE DE LO CUAL, los plenipotenciarios abajo firmantes suscriben el presente Convenio.

TIL BEKRÆFTELSE HERAF har undertegnede befuldmægtigede underskrevet denne konvention.

ZU URKUND DESSEN haben die unterzeichneten Bevollmächtigten ihre Unterschriften unter dieses Übereinkommen gesetzt.

ΣΕ ΠΙΣΤΩΣΗ ΤΩΝ ΑΝΩΤΕΡΩ, οι κάτωθι πληρεξούσιοι υπέγραψαν την παρούσα σύμβαση.

IN WITNESS WHEREOF, the undersigned Plenipotentiaries have hereunto set their hands.

EN FOI DE QUOI, les plénipotentiaires soussignés ont apposé leurs signatures au bas de la présente convention.

DA FHIANÚ SIN, chuir na Lánchumhachtaigh thíos-sinthe a lámh leis an gCoinbhinsiún seo.

IN FEDE DI CHE, i plenipotenziari sottoscritti hanno apposto le loro firme in calce alla presente convenzione.

TEN BLIJKE WAARVAN de ondergetekende gevolmachtigden deze overeenkomst hebben ondertekend.

EM FE DO QUE os plenipotenciários abaixo-assinados apuseram as suas assinaturas no final da presente Convenção.

CONV/ASILE/X 2

HECHO en Dublín el quince de junio de mil novecientos noventa, en un ejemplar único, en lenguas alemana, inglesa, danesa, española, francesa, griega, irlandesa, italiana, neerlandesa y portuguesa, dando fe asimismo los textos redactados en cada una de dichas lenguas depositados en los archivos del Gobierno de Irlanda que transmitirá una copia certificada conforme a cada uno de los Estados miembros.

UDFÆRDIGET i Dublin, den femtende juni nitten hundrede og halvfems i ét eksemplar på dansk, engelsk, fransk, græsk, irsk, italiensk, nederlandsk, portugisisk, spansk og tysk, hvilke tekster har samme gyldighed og deponeres i arkiverne hos Irlands regering, som sender en bekræftet kopi til hver af de andre medlemsstater.

GESCHEHEN zu Dublin am fünfzehnten Juni neunzehnhundertneunzig, in einer Urschrift in dänischer, deutscher, englischer, französischer, griechischer, irischer, italienischer, niederländischer, portugiesischer und spanischer Sprache, wobei jeder Wortlaut gleichermassen verbindlich ist; sie wird im Archiv der Regierung von Irland hinterlegt, die den übrigen Mitgliedstaaten jeweils eine beglaubigte Abschrift übermitteln.

ΕΓΙΝΕ στο Δουβλίνο στις δεκα πέντε Ιουνίου χίλια εννιακόσια ενενήντα, σε ένα μόνο αντίτυπο στην αγγλική, γαλλική, γερμανική, δανική, ελληνική, ιρλανδική, ισπανική, ιταλική, ολλανδική και πορτογαλική γλώσσα. Τα κείμενα στις γλώσσες αυτές είναι εξίσου αυθεντικά και είναι κατατεθειμένα στα αρχεία της κυβέρνησης της Ιρλανδίας η οποία θα διαβιβάσει επικυρωμένο αντίγραφο σε κάθε κράτος μέλος.

DONE at Dublin this fifteenth day of June in the year one thousand nine hundred and ninety, in a single original, in the Danish, Dutch, English, French, German, Greek, Irish, Italian, Portuguese and Spanish languages, the texts drawn up in each of these languages being equally authentic and being deposited in the archives of the Government of Ireland which shall transmit a certified copy to each of the other Member States.

FAIT à Dublin, le quinze juin mil neuf cent quatre-vingt-dix, en un exemplaire unique, en langues allemande, anglaise, danoise, espagnole, française, grecque, irlandaise, italienne, néerlandaise et portugaise, les textes établis dans chacune de ces langues faisant également foi et étant déposés dans les archives du gouvernement d'Irlande qui transmettra une copie certifiée conforme à chacun des autres Etats membres.

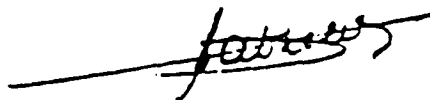
ARNA DHEANAMH i mBaile Átha Cliath ar an gcúigiú lá déag de Mheitheamh sa bhliain míle naoi gcéad nócha, i scríbhinn bhunaidh amháin sa Bhéarla, sa Danmhairgis, sa Fhraincis, sa Ghaeilge, sa Ghearmáinis, sa Ghréigis, san Iodáilis, san Ollainnis, sa Phortaingéilis agus sa Spáinnis agus comhúdarás ag na téacsanna i ngach ceann de na teangacha sin; déanfar iad a thaisceadh i gcartlann Rialtas na hÉireann agus cuirfidh an Rialtas sin cóip dheimhnithe chuig gach ceann de na Ballstáit eile.

FATTO a Dublino, addìquindici giugno millenovecentonovanta, in esemplare unico, nelle lingue danese, francese, greca, inglese, irlandese, italiana, olandese, portoghese, spagnola e tedesca, il cui testo in ciascuna di queste lingue fa ugualmente fede ed è depositato negli archivi del Governo d'Irlanda che provvederà a rimetterne copia certificata conforme a ciascuno degli altri Stati membri.

GEDAAN te Dublin, de vijftiende juni negentienhonderd negentig, in één exemplaar in de Deense, de Duitse, de Engelse, de Spaanse, de Franse, de Griekse, de Ierse, de Italiaanse, de Nederlandse en de Portugese taal, zijnde de teksten in elk van deze talen gelijkelijk authentiek en nedergelegd in het archief van de Regering van Ierland, die een voor eensluitend gewaarmerkt afschrift daarvan toezendt aan alle overige Lid-Staten.

FEITO em Dublin, em quinze de Junho de mil novecentos e noventa, num único exemplar, nas línguas alemã, dinamarquesa, espanhola, francesa, grega, inglesa, irlandesa, italiana, neerlandesa e portuguesa, fazendo fé qualquer dos textos, que serão depositados nos arquivos do Governo da Irlanda, que enviará uma cópia autenticada a cada um dos outros Estados-membros.

Pour Sa Majesté le Roi des Belges
Voor Zijne Majesteit de Koning der Belgen



For Hendes Majestæt Danmarks Dronning

Für den Präsidenten der Bundesrepublik Deutschland



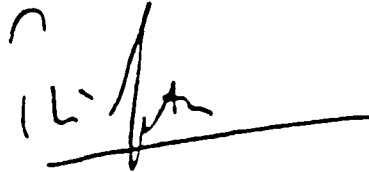
Για τον Πρόεδρο της Ελληνικής Δημοκρατίας



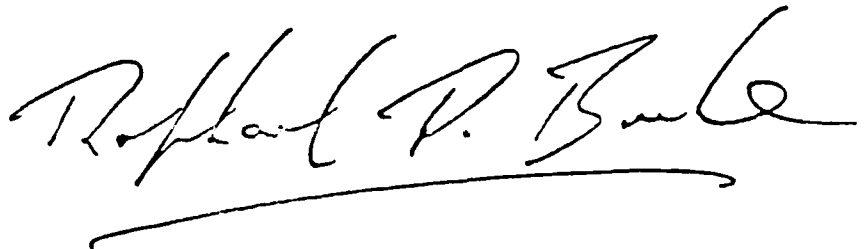
Por Su Majestad el Rey de España



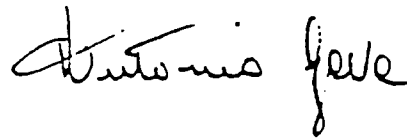
Pour le Président de la République française



For the President of Ireland
Thar ceann Uachtarán na hÉireann

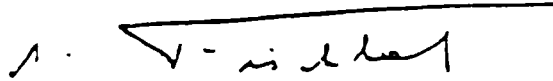


Per il Presidente della Repubblica italiana



CONV/ASILE/X 7

Pour Son Altesse Royale Le Grand-Duc de Luxembourg



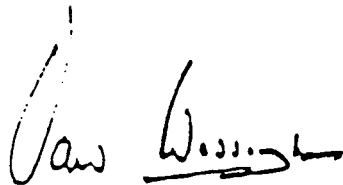
Voor Hare Majesteit de Koningin der Nederlanden

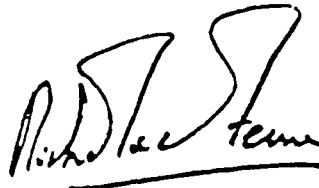


Pelo Presidente da República Portuguesa



For Her Majesty the Queen of the United Kingdom of
Great Britain and Northern Ireland





CONV/ASILE/X 9

(b) RESOLUTION A3-0337/92

Resolution on the harmonization within the European Community of asylum law and policies

The European Parliament,

- having regard to the Universal Declaration of Human Rights of 10 December 1948, in particular Article 14, 'Everyone has a right to seek and to enjoy in other countries asylum from persecution',
- having regard to the Geneva Convention relating to the Status of Refugees of 1951 and the additional protocol of 1967, which have been ratified by all the Member States,
- having regard to Standard 3.36 of Annex 9 of the Chicago Treaty of 1944 on international aviation, under which no sanctions may be imposed on airlines except in cases of serious negligence which could constitute assisting illegal immigration,
- having regard to Article 13 of the European Convention on Human Rights, Council of Europe Recommendation 1/16 and paragraph 7 of the conclusions of the Executive Council of the UNHCR (EXCOMCONC No 8/1977), which provide for suspension during the appeal procedure,
- having regard to the statement on Human Rights by the representatives of the Member States governments in the Council of 21 July 1986,

Wednesday, 18 November 1992

- having regard to its earlier resolutions on the subject, in particular the resolution of 12 March 1987 on asylum laws ⁽¹⁾ and the resolution of 13 September 1991 on the free movement of persons and security within the Community ⁽²⁾, and its requests to the Council and Commission to put forward proposals for harmonizing visa requirements, laws on aliens and the right of asylum and on the drawing up of a Common European policy on refugees,
- having regard to the particular efforts made by non-governmental organizations involved in refugee work, without which it would be impossible to provide housing and care for asylum seekers in the Member States of the Community and for local authorities to absorb a large number of refugees, with considerable administrative, social and financial cost to themselves,
- having regard to the resolutions and recommendations of the Committee of Ministers and the Parliamentary Assembly of the Council of Europe on the legal and social treatment of asylum seekers,

having regard to the White Paper of the Commission to the European Council on completing the Internal Market of June 1985, in which it announces that it will be proposing a Directive on the coordination of provisions governing the right of asylum and refugee status not later than 1988, which has not been done so far,
- having regard to the fact that in pursuance of the goal of establishing a European Union the Community must as part of the continuing process towards integration prescribe harmonization in measures in the area of asylum law,

having regard to the differing and frequently inadequate standards and procedures applied by the Member States in discharging their legal and humanitarian obligations to asylum seekers and refugees,
- having regard to the fact that a harmonized asylum policy must provide for the situation of *de facto* refugees, and that the persons concerned must always be guaranteed the right to submit an application for asylum and access to the procedure,

having regard to the professed and reiterated wish of the Member States as expressed at successive European Councils to rectify this position by harmonizing their approach to asylum,

having regard to the Dublin Convention on the State responsible for the examination of an asylum application,

having regard to the Articles K to K9 of the Treaty on European Union and the Declaration on Asylum in the Final Act,
- having regard to its resolution of 10 October 1990 on the findings of the Committee of Inquiry into racism and xenophobia ⁽³⁾,

having regard to its resolution of 19 November 1992 on the entry into force of the Schengen Agreements ⁽⁴⁾,

having regard to the evidence at its public hearings, with representatives of the Parliaments of the Member States, the UNHCR and representatives of non-governmental organizations active in this field,

having regard to the motion for a resolution by Mr Arbeloa Muru on applicants for asylum at European airports (B3-0630/92),
- having regard to Rule 121 of its Rules of Procedure,

having regard to the report of the Committee on Civil Liberties and Internal Affairs and the opinion of the Committee on Social Affairs, Employment and the Working Environment (A3-0337/92),

(1) OJ No C 99, 13.3.1987, p. 167.

(2) OJ No C 267, 14.10.1991, p. 197.

(3) OJ No C 284, 12.11.1990, p. 57.

(4) Minutes of that sitting, Part II, Item 9.

Wednesday, 18 November 1992

- A. whereas the Member States of the Community ought to set an example in terms of respect for human dignity;
- B. whereas the preparation of a harmonized asylum policy for the European Community is for the most part in the hands of national officials and the executive, with little or no direct accountability to national parliaments and the European Parliament;
- C. whereas it is only by invoking Article 100c of the EC Treaty that the Member States will ensure that their laws and practices in relation to asylum will be consistent and in accordance with Community law, with the appropriate degree of public accountability;
- D. convinced that in discharge of its fundamental democratic role as the voice of the individual, it must vindicate the right of the asylum seeker and combat the abuse of the right of asylum;
- E. convinced that the Member States should take more active measures to combat the underlying causes which result in refugees and should favour a policy of prevention which would hinder the development of refugee problems and be commensurate with the historical, political and economic responsibilities and significance of the Community and the Member States;
- F. convinced that in the long term the refugee problem ought to be settled by economic and social progress and political stability in the refugees' countries of origin, and whereas the Community has a major role to play, particularly with regard to countries with which it has cooperation agreements;
- G. convinced of the need for a common approach at European level to policies for the reception and active integration of asylum applicants;
1. Urges that the Member States implement the intent of the aforementioned Declaration on Asylum '... the Council will consider as a matter of priority questions concerning Member States' asylum policies with the aim of adopting at the beginning of 1993 common action to harmonize aspects of them' and that '... the Council will also consider by the end of 1993 on the basis of a report the possibility of applying Article K9 to such matters';
2. Urges that the Member States at the next European Council formally reiterate their commitment to the letter and the spirit of the Geneva Convention of 1951 and Protocol of 1967 including the role of the UNHCR, in accordance with the provisions of the European Convention on Human Rights;
3. Urges that the Commission assume greater responsibility and play a more active role in the area of asylum and refugee policy;
4. Urges that in operating their asylum policy the Member States cooperate with and when appropriate be guided by the UNHCR in accordance with the provision of Article 35 of the Geneva Convention;
5. Urges that the Member States also consult with existing NGOs working in the field of human rights and asylum law;
6. Urges that each Member State, if it has not already done so, acknowledge by national legislation and appropriate administrative instructions the right to seek asylum of those qualified under the Geneva Convention;
7. Urges that the legal code and procedures applicable to asylum seekers should
- ensure unfettered access to the territory and unfettered and automatic access to the procedures, even if the states concerned have arrangements based on a list of 'safe countries of origin',
 - ensure a full and fair initial hearing,
 - ensure the availability of free legal representation as a matter of course,

Wednesday, 18 November 1992

- (d) ensure that the asylum seeker and his legal representative have access to the relevant documents,
 - (e) arrange for interpretation facilities,
 - (f) provide for an appeal procedure on law or fact to a Court of Law, pending determination of which the applicant shall not be removed, except on grounds of national security or public order, and after judicial decision,
 - (g) ensure that a decision at first instance may not take longer than six months,
 - (h) ensure that legal remedy remains open and that no restrictions are placed on the guarantee of legal remedy,
 - (i) ensure access to UNHCR and to representatives of human rights organizations and those designated by the asylum seeker as trustworthy persons;
8. Urges that in order to determine refugee status on a consistent basis Member States have recourse to the UNHCR handbook on Procedures and Criteria for determining refugee status;
9. Urges that a group of experts from each of the Member States together with a representative of the Commission and the UNHCR be set up on an *ad hoc* basis to advise on cases which are novel;
10. Urges that a Book of Precedents of such cases be compiled and revised regularly and be available not only to all officials dealing with asylum applications, but also to human rights organizations and organizations for the defence of asylum seekers' interests; the right to protection of privacy must be guaranteed;
11. Urges that a European Committee on Asylum and Refugees (ECAR) be established with the task of providing preliminary rulings on questions of country of origin, ECAR should be composed of representatives of the Council, the Commission, UNHCR and legal experts. It shall draw up an annual report on its activities and submit it to the European Parliament, which will deliver an opinion thereon;
12. Urges that the ultimate power of decision on the interpretation of asylum law provisions in the Community Member States and the interpretation of the various conventions (the Convention on Human Rights and the Geneva Convention on Refugees) be transferred to an international court; this would make uniform treatment for asylum seekers in the various Member States possible in the long term;
13. Urges that the Member States take immediate steps to adopt a policy for the provision of protection to *de facto* refugees and setting out the conditions of their refuge, including as a minimum a humanitarian right to remain, pending the possibility of a return in safety and dignity to their country of origin;
14. Urges that the Commission, in order to deal with *de facto* refugees, submit proposals for consideration and approval by the European Parliament and Council;
15. Urges that the Member States and the Commission set up a mechanism charged with assisting economically and/or politically those countries with a potential to produce refugees with a view to addressing the root causes thereof and procuring durable solutions; to this end, the Commission and the Council, when negotiating trade and cooperation agreements with third countries, must insist that their partners in the agreement commit themselves to respecting the rights laid down in the European Convention on Human Rights and the Geneva Convention on Refugees and take verifiable measures to provide effective protection for minorities; undertakes to approve such agreements under the abovementioned conditions only;
16. Urges that all asylum seekers should have automatic and unfettered access to admission procedures in accordance with the spirit of the Geneva Convention, and that visa policies (and the utilization of so-called international zones) should not be an impediment to access to the procedures;

Wednesday, 18 November 1992

17. Urges that possible measures making carriers responsible where their passengers do not have the required documents must not be at variance with the provisions of Annex 9 of the 1944 Chicago Convention on International Civil Aviation, unless proof of gross negligence on the part of such companies can be established;
18. Urges that personnel involved in asylum admission should be trained and provided with up-to-date information according to common standards, with interchange between Member States and the use of the expertise of the UNHCR;
19. Urges that in the event of an influx of refugees, each Member State should take refugees in proportion to its capacity;
20. Calls on the Member States to accommodate the wishes of refugees in the choice of their preferred country of asylum in accordance with Recommendation 15 of the UNHCR Executive Committee;
21. Urges that arrangements be made and formalized for Member States to come to the assistance of one Member State which is receiving a large number of refugees;
22. Urges that reception measures should guarantee the safety, health and personal and physical integrity of asylum seekers; the detention of asylum seekers is, as a matter of principle, unacceptable except under exceptional circumstances, such as pending deportation or in case of appeal against rejection of an asylum application or rejected or manifestly unfounded asylum applications; the regulations laid down by the relevant UN organizations must be respected; the decision is a matter of ministerial responsibility and the person concerned must be able to appeal against this decision; provision should be made for regular evaluation (at two-weekly intervals at most) of the need for detention, and the person concerned can not, under any circumstances, be held in penal custody;
23. Urges Member States to revise their plans for the centralized accommodation of asylum seekers and make full use of all decentralized accommodation options;
24. Urges that the Community and the Member States provide resources for humanitarian organizations, refugee initiatives and local authorities, in order to inform the residents of the local communities where asylum seekers are housed about the reasons why they have sought refuge and the human right of asylum;
25. Urges that, when dealing with a large number of manifestly unfounded asylum applicants, Member States shall provide sufficient personnel to ensure that all applicants be given full and normal access to the admission system and procedure, but with the possibility of a review procedure in a more simplified form, as speedily as possible and with a suspensory effect;
26. Urges that common criteria to determine what is a safe country of first asylum be drawn up and that the criteria be determined in consultation with the UNHCR;
27. Urges that the criteria referred to in paragraph 26 should as a minimum contain the following:
- (a) ratification of and a history of respect for and compliance with the 1951 Convention and the main international human rights Conventions,
 - (b) a willingness to accept returned asylum seekers and accord them basic humane conditions,
 - (c) the availability of due process;
28. Urges that Member States draw up common criteria on the basis of information from the UNHCR, and draw conclusions from the situation in the countries of origin provided they (the Member States) have at the same time commonly acknowledged that the presumption of safety may be rebutted at the suit of the applicant or on his behalf;

Wednesday, 18 November 1992

29. Urges that the notion of the safe country of origin should not be availed of until Member States agree common criteria for identifying such countries, which should include the following:

- (a) adherence to and compliance with international human rights conventions,
- (b) membership of and accessibility for individuals to international organizations with human rights responsibilities,
- (c) guarantees that the right of access to judicial procedure, the right of defence and the right of appeal will be respected;

30. Urges that the Member States should strengthen their investigative procedures and criminal sanctions against the menace of clandestine immigration networks;

31. Urges that before any Member State decides that cessation as contemplated by the Geneva Convention exists the Member States shall establish a common accord to that effect, having consulted the UNHCR;

32. Urges that the Member States and the Commission, in consultation with the European Parliament, and in the light of the Council declaration on asylum, establish a system for the exchange of information which will contribute to the efficiency and consistency of their asylum procedures, including where necessary the accumulation of personal data which however shall be subject to appropriate safeguards for the protection of the privacy of the applicant for asylum, his/her spouse and dependents and which information must be removed from all files once the right of asylum has been granted;

33. Urges that in setting up the centre for information, consultation and exchange of information ('clearing house'), as decided on 11 June 1992 at the meeting of the ministers responsible for immigration policy in Lisbon, the Member States guarantee the following principles:

- the clearing house should be given an independent status by the Member States and must also be able to collect information which is less welcome to certain government bodies, including data provided by private organizations;
- the clearing house must only collect and process information; under no circumstances must it be given the task of making preparations for the 'harmonization of asylum policy';
- collected data on which official decisions with regard to individuals are based should be equally accessible to the official body in question and to the person concerned or the person or body empowered to act for the person concerned;
- the information collected must be comprehensible, up-to-date and accurate;
- the clearing house may not gather information on individual asylum seekers;
- the operations of the clearing house must be monitored by the parliaments and all the information gathered must be accessible to the UNHCR and to experts in the field of asylum and refugee policy;

34. Urges that the Member States in dealing with rejected cases of asylum seekers shall do so in accordance with immigration policies and in cases where a request for asylum is refused shall facilitate early return to and in cooperation with the country of origin;

35. Recommends that the Council ensure that measures are taken in the Member States to grant an asylum seeker whose application has been recognized by the national authorities temporary assistance of a social nature;

36. Recommends that the Council ensure that measures are taken in the Member States to provide for the well-being of recognized refugees in accordance with the Geneva Convention;

37. Calls for specialist refugee aid organizations to receive financial support and to be consulted on asylum policy;

38. Instructs its President to forward this resolution to the Commission, the Council, the group of ministers responsible for the immigration policy of the Member States, the secretariats of the official consultative bodies referred to in this resolution, the governments and parliaments of the Member States, the Council of Europe and the UNHCR.

Wednesday, 18 November 1992

2. Immigration and asylum

(a) RESOLUTION A3-0280/92

Resolution on European immigration policy

The European Parliament,

- having regard to its resolutions of 9 May 1985 on guidelines for a Community policy on migration ⁽¹⁾ and 14 June 1990 on immigrant workers from third countries ⁽²⁾,
 - having regard to its resolution of 12 June 1986 on obstacles to the free movement of persons within the European Community -- visa requirements for citizens of third countries ⁽³⁾,
 - having regard to its resolution of 14 October 1987 on discrimination against immigrant women in the laws and legal provisions of the Communities ⁽⁴⁾,
 - having regard to the 1951 Geneva Convention relating to the Status of Refugees and the 1967 New York Protocol,
 - having regard to the conclusions by its Committees of Inquiry on racism and xenophobia in Europe,
 - having regard to the outcome of the conference on workers from third countries organized by the European Parliament and the Economic and Social Committee on 3 and 4 June 1991 ⁽⁵⁾,
 - having regard to Articles 8a, 100c and K9 of the Treaty on European Union,
 - having regard to the report of the ministers responsible for immigration at the Maastricht European Council,
 - having regard to the Commission communications to the Council and Parliament on immigration (SEC(91)1855) and on the abolition of internal border controls (SEC(92)0877),
 - having regard to its resolution of 8 July 1992 on the European labour market after 1992 ⁽⁶⁾,
 - having regard to Rule 121 of its Rules of Procedure,
 - having regard to the report of the Committee on Civil Liberties and Internal Affairs and the opinions of the Committee on Social Affairs, Employment and the Working Environment and the Committee on Culture, Youth, Education and the Media (A3-0280/92),
- A. whereas immigration, although a phenomenon of long standing within Europe, does not have the same historical background and structure in all Member States,
- B. whereas the decision to emigrate has a huge impact on the life of any individual,
- C. whereas, despite the official ban on immigration, the EC Member States have *de facto* remained countries of immigration,
- D. whereas the problem of an ageing population means that new workers must be attracted from outside the Community in order to maintain the same level of economic activity and standards of living,

⁽¹⁾ OJ No C 141, 10.6.1985, p. 149

⁽²⁾ OJ No C 175, 16.7.1990, p. 150

⁽³⁾ OJ No C 176, 14.7.1986, p. 127

⁽⁴⁾ OJ No C 305, 16.11.1987, p. 70

⁽⁵⁾ PE 155464

⁽⁶⁾ OJ No C 241, 21.9.1992, p. 51

Wednesday, 18 November 1992

- E. whereas immigration may also have undesirable consequences in the countries of origin ('brain drain');
- F. whereas the completion of the internal market makes a Community-wide approach to immigration policy a necessity;
- G. whereas, however, according to the Commission, this principle 'must not be confused with the rights which flow directly from Articles 48 to 66 of the Treaty' (aforementioned communication SEC(92)0877, Annex I);
- H. whereas the proportion of women and children in migration is increasing on a structural basis, and specific measures are needed;
- I. whereas illegal immigration is an economic and human reality with social and political consequences and calls for Community-wide measures;
- J. regretting the lack of coherence of the Treaty on European Union, particularly Articles 100c and K9 and the Social Protocol, and the fact that immigration policy remains an intergovernmental concern;
1. Stresses the need for Community-level harmonization of immigration policy, to ensure that nationals of third countries are protected by Community law;
 2. Points out the importance of channelling migration in a rational manner and calls on the Commission to set up a European monitoring centre to supervise migratory movements;
 3. Asks, in accordance with its above-mentioned resolution of 8 July 1992, that 'foreseeable labour demand and supply be the subject of agreements between the Community Member States and the immigrants' countries of origin';
 4. Takes the view that immigratory pressures may be stemmed by providing the countries of origin with support for economic development, and points out that this will require financial and technical aid, agreements on cooperation and trade, technology transfer and a position consonant with the above in the GATT negotiations; notes in this context that the extent of respect for human rights and democratization in the countries of origin are for many people, including skilled workers, a determining factor in their decision to emigrate or remain at home;
 5. Considers that asylum policy should be distinguished from other forms of migration in legal and policy terms;
 6. Calls on the Commission to draw up a statute before the end of 1993 for those who flee on grounds of poverty or hunger, from war or disasters, and who are not covered by the Geneva Convention or the New York Protocol and to submit this draft for approval to the European Parliament, and calls on the Council to adopt the proposed statute;
 7. Calls on the Commission to draw up plans for a European Fund for Refugees and an emergency plan for the reception of refugees, evenly distributed throughout the Community;
 8. Points out that the right to family reunification derives directly from the right of residence and insists on the right of any man or woman legally resident in any EC country to have their spouse and children aged 18 or under join them if they so wish; calls for all third country citizens who have taken up residence in an EC country after marriage to an EC citizen to be guaranteed continued right of residence if that marriage breaks down, leading to separation or divorce;
 9. Stresses the need to grant freedom of movement throughout the EFTA countries to all those with right of residence in an EC Member State;
 10. Calls for Directive 90/366/EEC to be extended to non-EC students;

Wednesday, 18 November 1992

11. Points out that gypsies in Central and Eastern Europe are subject to severe discrimination and require particular attention;
12. Points out that the re-emigration of migrants with right of residence can only take place on a voluntary basis;
13. Considers that measures must be taken to combat all forms of illegal migration and asks that residence permits be granted only to those illegal immigrants who can give humanitarian reasons for their presence;
14. Calls for Community Regulations to control illegal employment and severe penalties for employers employing illegal immigrants;
15. Considers that illegal immigrants should be deported unless their health and physical integrity are at risk;
16. Considers that illegal employment could be discouraged both by means of penalties and by introducing employment contracts which take into account the specific needs of the economic sectors concerned, without prejudice to the fundamental social rights of the workers involved, and by abolishing all provisions which help turn legal immigrants into illegal immigrants;
17. Calls on the Commission to submit to Parliament before the end of 1993 a new proposal for combating illegal employment;
18. Calls for campaigns to inform people in immigrants' countries of origin about the risks and problems associated with illegal immigration;
19. Calls for information campaigns in the EC to improve understanding of immigrants' motives and the difficult situation in which they live, firm action to combat xenophobic violence in the Member States, more twinning of towns and more school and cultural exchanges between the EC and the countries of Eastern Europe and the Third World;
20. Calls on the Community to conclude agreements with the principal countries of origin of illegal immigrants on taking them back;
21. Calls for the issue of provisional work permits to satisfy the demand side and enable migrants in search of work to earn their living on our labour market for a temporary period and with a view to this, supports the Commission proposal to create a common framework for temporary employment contracts based on the principles of ILO Recommendation No 86 (1949);
22. Calls for proposals to be drawn up concerning special employment contracts and associated social measures to be adopted in consultation with the country of emigration, in particular the transfer of social security entitlements;
23. Considers that it is the duty of the national and local authorities in agreement with the two sides of industry to manage demand for labour and organize the intake of temporary workers;
24. Deplores the reluctance shown by some Member States to implement the social provisions of certain association agreements, despite the fact that the Court of Justice has upheld their direct applicability;
25. Points out that migrants in search of temporary employment should be protected by Community law;
26. Calls for the early creation of the instruments for a Community visa policy provided for in Article 100c(1) and (3) of the Treaty on European Union; therefore calls on the Commission to submit the required proposals as soon as possible;
27. Takes the view that Community visa policy must scrupulously respect the international conventions on human rights;
28. Considers that all non-EC citizens applying for an EC visa should be able to acquire the visa within a reasonable period;

I

(Acts whose publication is obligatory)

COUNCIL REGULATION (EC) No 1683/95

of 29 May 1995

laying down a uniform format for visas

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, in particular Article 100c (3) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Whereas Article 100c (3) of the Treaty requires the Council to adopt measures relating to a uniform format for visas before 1 January 1996;

Whereas the introduction of a uniform format for visas is an important step towards the harmonization of visa policy; whereas Article 7a of the Treaty stipulates that the internal market shall comprise an area without internal frontiers in which the free movement of persons is ensured in accordance with the provisions of the Treaty; whereas this step is also to be regarded as forming a coherent whole with measures falling within Title VI of the Treaty on European Union;

Whereas it is essential that the uniform format for visas should contain all the necessary information and meet very high technical standards, notably as regards safeguards against counterfeiting and falsification; whereas it must also be suited to use by all the Member States and bear universally recognizable security features which are clearly visible to the naked eye;

Whereas this Regulation only lays down such specifications as are not secret; whereas these specifications need to be supplemented by further specifications which must remain secret in order to prevent counterfeiting and falsification and which may not include personal data or references to such data; whereas powers to adopt further specifications should be conferred on the Commission;

Whereas, to ensure that the information referred to is not made available to more persons than necessary, it is also essential that each Member State should designate not more than one body having responsibility for printing the uniform format for visas, with Member States remaining

free to change the body, if need be; whereas, for security reasons, each Member State must communicate the name of the competent body to the Commission and the other Member States;

Whereas, to be effective, this Regulation should apply to all visas covered by Article 5; whereas Member States should be free also to use the uniform visa format for visas which can be used for purposes other than those covered by Article 5 provided differences visible to the naked eye are incorporated to make confusion with the uniform visa impossible;

Whereas, with regard to the personal data to be entered on the uniform format for visas in accordance with the Annex hereto, compliance should be ensured with Member States' data-protection provisions as well as with the relevant Community legislation,

HAS ADOPTED THIS REGULATION:

Article 1

Visas issued by the Member States in conformity with Article 5 shall be produced in the form of a uniform format (sticker). They shall conform to the specifications set out in the Annex.

Article 2

Further technical specifications which render the visa difficult to counterfeit or falsify shall be laid down in accordance with the procedure set out in Article 6.

Article 3

1. The specifications referred to in Article 2 shall be secret and not be published. They shall be made available only to bodies designated by the Member States as responsible for printing and to persons duly authorized by a Member State or the Commission.

2. Each Member State shall designate one body having responsibility for printing visas. It shall communicate the name of that body to the Commission and the other Member States. The same body may be designated by two or more Member States for this purpose. Each Member State shall be entitled to change its designated body. It shall inform the Commission and the other Member States accordingly.

Article 4

1. Without prejudice to the relevant more extensive provisions concerning data protection, an individual to whom a visa is issued shall have the right to verify the personal particulars entered on the visa and, where appropriate, to ask for any corrections or deletions to be made.

2. No information in machine-readable form shall be given on the uniform format for visas unless it also appears in the boxes described in points 6 to 12 of the Annex, or unless it is mentioned in the relevant travel document.

Article 5

For the purposes of this Regulation a 'visa' shall mean an authorization given by or a decision taken by a Member State which is required for entry into its territory with a view to:

- an intended stay in that Member State or in several Member States of no more than three months in all,
- transit through the territory or airport transit zone of that Member State or several Member States.

Article 6

1. Where reference is made to the procedure defined in this Article, the following provisions shall apply.

2. The Commission shall be assisted by a committee composed of the representatives of the Member States and chaired by the representative of the Commission.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 29 May 1995.

The representative of the Commission shall submit to the committee a draft of the measures to be taken. The committee shall deliver its opinion on the draft within a time limit which the chairman may lay down according to the urgency of the matter. The opinion shall be delivered by the majority laid down in Article 148 (2) of the Treaty in the case of decisions which the Council is required to adopt on a proposal from the Commission. The votes of the representatives of the Member States within the committee shall be weighted in the manner set out in that Article. The chairman shall not vote.

3. (a) The Commission shall adopt the measures envisaged if they are in accordance with the opinion of the committee.

(b) If the measures envisaged are not in accordance with the opinion of the committee, or if no opinion is delivered, the Commission shall, without delay, submit to the Council a proposal relating to the measures to be taken. The Council shall act by a qualified majority.

If, on the expiry of a period of two months, the Council has not acted, the proposed measures shall be adopted by the Commission, save where the Council has decided against the said measures by a simple majority.

Article 7

Where Member States use the uniform visa format for purposes other than those covered by Article 5, appropriate measures must be taken to ensure that confusion with the visa referred to in Article 5 is not possible.

Article 8

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Communities*.

Article 1 shall become applicable six months after the adoption of the measures referred to in Article 2.

For the Council
The President
H. de CHARETTE

ANNEX



Security features

1. A sign consisting of nine ellipses in a fan-shape shall appear in this space.
2. An optically variable mark ('kinegram' or equivalent) shall appear in this space. Depending on the angle of view, 12 stars, the letter 'E' and a globe become visible in various sizes and colours.
3. The logo consisting of a letter or letters indicating the issuing Member State (or 'BNL' in the case of the Benelux countries, namely Belgium, Luxembourg and the Netherlands) with a latent image effect shall appear in this space. This logo shall appear light when held flat and dark when turned by 90°. The following logos shall be used: A for Austria, BNL for Benelux, D for Germany, DK for Denmark, E for Spain, F for France, FIN for Finland, GR for Greece, I for Italy, IRL for Ireland, P for Portugal, S for Sweden, UK for the United Kingdom.
4. The word 'visa' in capital letters shall appear in the middle of this space in optically variable colouring. Depending on the angle of view, it shall appear green or red.
5. This box shall contain the number of the visa, which shall be pre-printed and shall begin with the letter or letters indicating the issuing country as described in point 3 above. A special type shall be used.

Sections to be completed

6. This box shall begin with the words 'valid for'. The issuing authority shall indicate the territory or territories for which the visa is valid.
7. This box shall begin with the word 'from' and the word 'until' shall appear further along the line. The issuing authority shall indicate here the period of validity of the visa.
8. This box shall begin with the words 'number of entries' and further along the line the words 'duration of stay' (i.e. duration of applicants' intended stay) and again 'days' shall appear.
9. This box shall begin with the words 'issued in' and shall be used to indicate the place of issue.
10. This box shall begin with the word 'on' (after which the date of issue shall be filled in by the issuing authority) and further along the line the words 'number of passport' shall appear (after which the holder's passport number shall appear).

11. This box shall begin with the words 'type of visa'. The issuing authority shall indicate the category of visa in conformity with Articles 5 and 7 of this Regulation.
12. This box shall begin with the word 'remarks'. It shall be used by the issuing authority to indicate any further information which is considered necessary, provided that it complies with Article 4 of this Regulation. The following two and a half lines shall be left empty for such remarks.
13. This box shall contain the relevant machine-readable information to facilitate external border controls.

The paper shall be pastel green with red and blue markings.

The words designating the boxes shall appear in English and French. The issuing State may add a third official Community language. However, the word 'visa' in the top line may appear in any one official language of the Community.

I

(Acts whose publication is obligatory)

**COUNCIL REGULATION (EC) No 2317/95
of 25 September 1995**

**determining the third countries whose nationals must be in possession of visas
when crossing the external borders of the Member States**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to the proposal from the Commission ⁽¹⁾,

Having regard to the opinion of the European Parliament ⁽²⁾,

Whereas Article 100c of the Treaty requires the Council to determine the third countries whose nationals must be in possession of a visa when crossing the external borders of the Member States;

Whereas the drawing up of the common list annexed to this Regulation represents an important step towards the harmonization of visa policy; whereas the second paragraph of Article 7a of the Treaty stipulates in particular that the internal market shall comprise an area without internal frontiers in which the free movement of persons is ensured in accordance with the Treaty; whereas other aspects of the harmonization of visa policy, including the conditions for the issue of visas, are matters to be determined under Title VI of the Treaty on European Union;

Whereas risks relating to security and illegal immigration should be given priority consideration when the said common list annexed hereto is drawn up; whereas, in addition, Member States' international relations with third countries also play a role;

Whereas the principle that a Member State may not require a visa from a person wishing to cross its external borders if that person holds a visa issued by another Member State which meets the harmonized conditions governing the issue of visas and is valid throughout the Community or if that person holds an appropriate permit issued by a Member State is a matter that should be determined under Title VI of the Treaty on European Union;

Whereas this Regulation shall not prevent a Member State from deciding under what conditions nationals of third countries lawfully resident within its territory may re-enter it after having left the territory of the Member States of the Union during the period of validity of their permits;

Whereas, in special cases justifying an exemption where visa requirements would in principle exist, Member States may exempt certain categories of person in keeping with international law or custom;

Whereas since national rules differ on stateless persons, recognized refugees and persons who produce passports or travel documents issued by a territorial entity or authority which is not recognized as a State by all Member States, Member States may decide on visa requirements for that group of persons, where that territorial entity or authority is not on the said common list;

Whereas when adding new entities to the list it is necessary to take account of diplomatic implications and guidelines adopted on the matter by the European Union; whereas, at all events the inclusion of a third country on the common list is entirely without prejudice to its international status;

Whereas the determination of third countries whose nationals must be in possession of visas when crossing the external borders of the Member States should be achieved gradually; whereas Member States will constantly endeavour to harmonize their visa policies with regard to third countries not on the common list; whereas the present provisions must not prejudice the achievement of free movement for persons as provided for in Article 7a of the Treaty; whereas the Commission should draw up a progress report on harmonization after five years;

Whereas, with a view to ensuring that the system is administered openly and that the persons concerned are informed, Member States must communicate to the other Member States and to the Commission the measures which they take pursuant to this Regulation; whereas for the same reasons that information must also be published in the *Official Journal of the European Communities*;

⁽¹⁾ OJ No C 11, 15. 1. 1994, p. 15.

⁽²⁾ OJ No C 128, 9. 5. 1994, p. 350.

Whereas the information provided for in Articles 2 (4) and 4 (2) must be published before the other provisions of this Regulation come into force; whereas Articles 2 (4) and 4 (2) must therefore become applicable one month before the other provisions of the Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

1. Nationals of third countries on the common list in the Annex shall be required to be in possession of visas when crossing the external borders of the Member States.
2. Nationals of countries formerly part of countries on the common list shall be subject to the requirements of paragraph 1 unless and until the Council decides otherwise under the procedure laid down in Article 100c of the Treaty.

Article 2

1. The Member States shall determine the visa requirements for nationals of third countries not on the common list.
2. The Member States shall determine the visa requirements for stateless persons and recognized refugees.
3. The Member States shall determine the visa requirements for persons who produce passports or travel documents issued by a territorial entity or authority which is not recognized as a State by all Member States if that entity or territorial authority is not on the common list.
4. Within ten working days of the entry into force of this paragraph, Member States shall communicate to the other Member States and the Commission the measures they have taken pursuant to paragraphs 1, 2 and 3. Any further measures taken pursuant to paragraph 1 shall be similarly communicated within five working days.

The Commission shall publish the measures communicated pursuant to this paragraph and updates thereof in the *Official Journal of the European Communities* for information.

Article 3

Five years after the entry into force of this Regulation the Commission shall draw up a progress report of the

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 25 September 1995.

harmonization of Member States' visa policies with regard to third countries not on the common list and, if necessary, submit to the Council proposals for further measures required to achieve the objective of harmonization laid down in Article 100c.

Article 4

1. A Member State may exempt nationals of third countries subject to visa requirements under Article 1 (1) and (2) from those requirements. This shall apply in particular to civilian air and sea crew, flight crew and attendants on emergency or rescue flights and other helpers in the event of disaster or accident and holders of diplomatic passports, official duty passports and other official passports.
2. Article 2 (4) shall apply *mutatis mutandis*.

Article 5

For the purposes of this Regulation, 'visa' shall mean an authorization given or a decision taken by a Member State which is required for entry into its territory with a view to:

- an intended stay in that Member State or in several Member States of no more than three months in all,
- transit through the territory of that Member State or several Member States, except for transit through the international zones of airports and transfers between airports in a Member State.

Article 6

This Regulation shall be without prejudice to any further harmonization between individual Member States, going beyond the common list, determining the third countries whose nationals must be in possession of a visa when crossing their external borders.

Article 7

This Regulation shall enter into force six months after its publication in the *Official Journal of the European Communities* except for Articles 2 (4) and 4 (2) which shall enter into force on the day following publication.

For the Council

The President

J. A. BELLOCH JULBE

ANNEX

COMMON LIST REFERRED TO IN ARTICLE 1

I. States

Afghanistan	Ghana	Pakistan
Albania	Guinea	Papua New Guinea
Algeria	Guinea Bissau	Peru
Angola	Guyana	Philippines
Armenia	Haiti	Qatar
Azerbaijan	India	Romania
Bahrain	Indonesia	Russia
Bangladesh	Iran	Rwanda
Belarus	Iraq	Sao Tomé and Príncipe
Benin	Jordan	Saudi Arabia
Bhutan	Kazakhstan	Senegal
Bulgaria	Kyrgyzstan	Sierra Leone
Burkina Faso	Kuwait	Somalia
Burundi	Laos	Sri Lanka
Cambodia	Lebanon	Sudan
Cameroon	Liberia	Suriname
Cape Verde	Libya	Syria
Central African Republic	Madagascar	Tajikistan
Chad	Maldives	Tanzania
China	Mali	Thailand
Comoros	Mauritania	Togo
Congo	Mauritius	Tunisia
Côte-d'Ivoire	Moldova	Turkey
Cuba	Mongolia	Turkmenistan
Djibouti	Morocco	Uganda
Dominican Republic	Mozambique	Ukraine
Egypt	Myanmar	United Arab Emirates
Equatorial Guinea	Nepal	Uzbekistan
Eritrea	Niger	Vietnam
Ethiopia	Nigeria	Yemen
Fiji	North Korea	Zaire
Gabon	Oman	Zambia
The Gambia		
Georgia		

II. Entities and territorial authorities not recognized as States by all the Member States

Taiwan
 Former Yugoslav Republic of Macedonia
 Federal Republic of Yugoslavia (Serbia and Montenegro)

Friday, 22 September 1995

(c) A4-0186/95

Resolution on the draft Council conclusions on the organization and development of the Centre for Information, Discussion and Exchange on the crossing of frontiers and immigration (Cirefi) (C4-0008/95)

The European Parliament,

- having regard to the draft Council conclusions (C4-0008/95),
 - having regard to Articles K.1, K.3, K.4 and K.6 of the Treaty on European Union and Articles 6, 7a, 8 and 8a of the Treaty establishing the European Community,
 - having regard to Rule 51 of its Rules of Procedure,
 - having regard to the report of the Committee on Civil Liberties and Internal Affairs and the opinion of the Committee on Legal Affairs and Citizens' Rights (A4-0186/95),
- A. whereas Article K.1 stipulates that asylum policy, immigration policy and certain rules governing the crossing of external borders are of relevance to achieving the objectives of the Union,
 - B. whereas Article K.4 stipulates that the Commission is to be fully associated with work in the fields of justice and home affairs,
 - C. whereas Article K.6 stipulates that the European Parliament is to be consulted on the principal aspects of activities in fields referred to in Title VI of the Treaty on European Union,
 - D. whereas the impression given is that the remit of Cirefi, whose title includes the term 'immigration', will gradually evolve in such a way that it focuses (solely) on combating illegal immigration,
 - E. whereas the planned gathering of information and data is taking place in the absence of the necessary data protection provisions, and whereas the point made in the Council's conclusions 'that personal data may not be processed and, in particular, may not be communicated to or by Cirefi' does not help remedy this situation,
 - F. whereas Parliament has so far received very little if any information on or from the Centre,
 - G. whereas research into immigration may be useful, but should not be conducted in conditions of secrecy.

General considerations

1. Is of the opinion that the Commission's right to propose legislation constitutes an essential and general feature of the TEU and that, in all areas covered by Article K.1(1) to (6), the Commission has a political obligation not to leave it to Member States or the Council Presidency to take the initiative;
2. Calls on the Commission to take a more active role, to propose binding measures and to forward such proposals to Parliament and the Council;
3. Urges the Commission, in all cases in which it can draw up proposals in the areas referred to in Article K.1(1) to (6), to investigate whether it is appropriate to apply Article K.9 and to report on such investigations in the explanatory memoranda accompanying its proposals;

Specific considerations

4. Regrets that the draft conclusions do not refer to the legal basis on which they are based and that these so-called conclusions are not one of the instruments of cooperation referred to in Article K.3 in Title VI of the TEU;
5. Points out that Parliament should have been consulted as regards this document, at least on the basis of the second paragraph of Article K.6 of the TEU and the document should not have been forwarded for information only, as was the case;

16. 10. 95

EN

Official Journal of the European Communities

No C 269/205

Friday, 22 September 1995

6. Notes that it does not have sufficient information on the Centre and that the Council and Commission have not provided it with such information;
 7. Points out that Cirefi is designed as a basic instrument for controlling illegal immigration, and that such control is an important aspect of the activities with legislative implications under Title VI of the TEU;
 8. Takes the view that the Council, by failing to consult Parliament on the basis of Article K.6 of the TEU and take due account of its views and any amendments it might make, and by disregarding the decision-making procedure laid down in the Treaty, is in breach of the Treaty;
 9. Notes that the impression given is that Cirefi will be engaged chiefly in combating illegal immigration;
 10. Has formed the impression, from the small amount of data available, that there is obvious duplication of the data on immigrants and asylum-seekers collected by the European Communities' Statistical Office, the data collected by the IOM and UNHCR and the Member States, the European Information System currently being established and the work which might be assigned to Europol;
 11. Calls for one observer appointed by the Commission and one observer appointed by Parliament to be allowed, with immediate effect, to attend Cirefi meetings;
 12. Finds that the provisions governing the communication and handling of so-called 'personal data' are imprecise and confusing; calls for proper guarantees to be laid down and for steps to be taken to ensure there is no duplication with other bodies in the collection of such data;
 13. Requests that this proposal should clearly define: the obligations of the Member States; relations with other similar intergovernmental or Community bodies; the conditions and restrictions on the communication of information and data by the Member States, the protection of information and data by the Member States, the practical arrangements for this purpose and the long-term and immediate objectives of Cirefi;
 14. Calls for the operation of the Centre to be reviewed after a certain period and for it to be subsequently transformed, in the light of experience, into a body with the ability to help facilitate and support, within the Union, the adoption of joint decisions and comprehensive policies on the prevention and control of illegal immigration;
 15. Hopes that illegal immigrants, too, will be treated with dignity;
- * * *
16. Considers that the Commission must make its position known as soon as possible;
 17. Rejects, in view of the foregoing, the draft Council conclusions;
 18. Instructs its President to forward this resolution to the Commission, the Council and the governments and parliaments of the Member States.

(Acts adopted pursuant to Title VI of the Treaty on European Union)

JOINT POSITION

of 4 March 1996

defined by the Council on the basis of Article K.3 of the Treaty on European Union on the harmonized application of the definition of the term 'refugee' in Article 1 of the Geneva Convention of 28 July 1951 relating to the status of refugees

(96/196/JHA)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article K.3 (2) (a) thereof,

Whereas under Article K.1 of the Treaty, asylum policy is regarded as a matter of common interest;

Whereas the European Council, meeting in Strasbourg on 8 and 9 December 1990, set the objective of harmonizing Member States' asylum policies, which was further developed by the European Council in Maastricht on 9 and 10 December 1991 and in Brussels on 10 and 11 December 1993, and in the Commission communication on immigration and asylum policies of 23 February 1994;

Emphasizing, in keeping with the Member States' common humanitarian tradition, the importance of guaranteeing appropriate protection for refugees in accordance with the provisions of the Geneva Convention of 28 July 1951 relating to the Status of Refugees, as amended by the New York Protocol of 31 January 1967, hereafter referred to as the 'Geneva Convention';

Having established that the Handbook of the United Nations High Commissioner for Refugees (UNHCR) is a valuable aid to Member States in determining refugee status;

Whereas harmonized application of the criteria for determining refugee status is essential for the harmonization of asylum policies in the Member States,

HAS ADOPTED THIS JOINT POSITION:

- The guidelines set out below for the application of criteria for recognition and admission as a refugee are hereby approved.
- These guidelines shall be notified to the administrative bodies responsible for recognition of refugee status, which are hereby requested to take them as a basis,

without prejudice to Member States' caselaw on asylum matters and their relevant constitutional positions.

- This joint position is adopted within the limits of the constitutional powers of the Governments of the Member States; it shall not bind the legislative authorities or affect decisions of the judicial authorities of the Member States.
- The Council shall review the application of these guidelines once a year and, if appropriate, adapt them to developments in asylum applications.

1. Recognition as a refugee

Determination of the status of refugee is based on criteria according to which the competent national bodies decide to grant an asylum-seeker the protection provided for in the Geneva Convention. This document relates to implementation of the criteria as defined in Article 1 of that Convention. It in no way affects the conditions under which a Member State may, according to its domestic law, permit a person to remain in its territory if his safety or physical integrity would be endangered if he were to return to his country because of circumstances which are not covered by the Geneva Convention but which constitute a reason for not returning him to his country of origin.

2. Individual or collective determination of refugee status

Each application for asylum is examined on the basis of the facts and circumstances put forward in each individual case and taking account of the objective situation prevailing in the country of origin.

In practice it may be that a whole group of people are exposed to persecution. In such cases, too, applications will be examined individually, although in specific cases this examination may be limited to determining whether the individual belongs to the group in question.

3. Establishment of the evidence required for granting refugee status

The determining factor for granting refugee status in accordance with the Geneva Convention is the existence of a well-founded fear of persecution on grounds of race, religion, nationality, political opinions or membership of a particular social group. The question of whether fear of persecution is well-founded must be appreciated in the light of the circumstances of each case. It is for the asylum-seeker to submit the evidence needed to assess the veracity of the facts and circumstances put forward. It should be understood that once the credibility of the asylum-seeker's statements has been sufficiently established, it will not be necessary to seek detailed confirmation of the facts put forward and the asylum-seeker should, unless there are good reasons to the contrary, be given the benefit of the doubt.

The fact that an individual has already been subject to persecution or to direct threats of persecution is a serious indication of the risk of persecution, unless a radical change of conditions has taken place since then in his country of origin or in his relations with his country of origin.

The fact that an individual, prior to his departure from his country of origin, was not subject to persecution or directly threatened with persecution does not *per se* mean that he cannot in asylum proceedings claim a well-founded fear of persecution.

'Persecution' within the meaning of Article 1A of the Geneva Convention

The term 'persecution' as it is used in this document is taken from Article 1A of the Geneva Convention.

The term is not defined in the Convention. Nor is a universally accepted definition to be found either in the conclusions of the UNHCR Executive Committee or in legal literature on the subject. The guidelines in this document do not constitute a definition.

However, it is generally agreed that, in order to constitute 'persecution' within the meaning of Article 1A, acts suffered or feared must:

- be sufficiently serious, by their nature or their repetition; they must either constitute a basic attack on human rights, for example, life,

freedom or physical integrity, or, in the light of all the facts of the case, manifestly preclude the person who has suffered them from continuing to live in his country of origin⁽¹⁾, and

- be based on one of the grounds mentioned in Article 1A: race, religion, nationality, membership of a particular social group or political opinions. Grounds of persecution may overlap and several will often be applicable to the same person. The fact that these grounds are genuine or simply attributed to the person concerned by the persecutor is immaterial.

Several types of persecution may occur together and the combination of events each of which, taken separately, does not constitute persecution may, depending on the circumstances, amount to actual persecution or be regarded as a serious ground for fear of persecution.

In the following guiding principles, the term 'persecution' is to be understood with reference to this section.

5. Origins of persecution

5.1. *Persecution by the State*

Persecution is generally the act of a State organ (central State or federal States, regional and local authorities) whatever its status in international law, or of parties or organizations controlling the State.

In addition to cases in which persecution takes the form of the use of brute force, it may also take the form of administrative and/or judicial measures which either have the appearance of legality and are misused for the purposes of persecution, or are carried out in breach of the law.

5.1.1. Legal, administrative and police measures

(a) *General measures*

The official authorities of a country are sometimes moved to take general measures to maintain public order, safeguard State security, preserve public health, etc. As

(1) This wording is without prejudice to point 8: 'whether the person concerned cannot find effective protection in another part of his own country. ...'

required, such measures may include restrictions on the exercise of certain freedoms. They may also be accompanied by the use of force, but such restrictions or use of force do not in themselves constitute sufficient grounds for granting refugee status to the individuals against whom the measures are directed. However, if it emerges that such measures are being implemented in a discriminatory manner on one or more of the grounds mentioned in Article 1A of the Geneva Convention and may have sufficiently serious consequences, they may give rise to a well-founded fear of persecution on the part of individuals who are victims of their improper application. Such is the case, in particular, where general measures are used to camouflage individual measures taken against persons who, for the reasons mentioned in Article 1A, are likely to be threatened by their authorities.

(b) *Measures directed against certain categories*

Measures directed against one or more specific categories of the population may be legitimate in a society, even when they impose particular constraints or restrictions on certain freedoms.

However, they may be considered as justifying fears of persecution, in particular where the aim which they pursue has been condemned by the international community, or where they are manifestly disproportionate to the end sought, or where their implementation leads to serious abuses aimed at treating a certain group differently and less favourably than the population as a whole.

(c) *Individual measures*

Any administrative measure taken against an individual, leaving aside any consideration of general interest referred to above, on one of the grounds mentioned in Article 1A, which is sufficiently severe in the light of the criteria referred to in section 4 of this Joint Position, may be regarded as persecution, in particular where it is intentional, systematic and lasting.

It is important, therefore, to take account of all the circumstances surrounding the individual measure reported by the asylum-seeker, in order to assess whether his fears of persecution are well-founded.

In all the cases referred to above, consideration must be given to whether there is an effective remedy or remedies which would put an end to

the situation of abuse. As a general rule, persecution will be indicated by the fact that no redress exists or, if there are means of redress, that the individual or individuals concerned are deprived of the opportunity of having access to them or by the fact that the decisions of the competent authority are not impartial (see 5.1.2) or have no effect.

5.1.2. Prosecution

Whilst appearing to be lawful, prosecution or court sentences may amount to persecution where they include a discriminatory element and where they are sufficiently severe in the light of the criteria referred to in section 4 of this Joint Position. This is particularly true in the event of:

(a) *Discriminatory prosecution*

This concerns a situation in which the criminal law provision is applicable to all but where only certain persons are prosecuted on grounds of characteristics likely to lead to the award of refugee status. It is therefore the discriminatory element in the implementation of prosecution policy which is essential for recognizing a person as a refugee.

(b) *Discriminatory punishment*

Punishment or the threat thereof on the basis of a universally applicable criminal law provision will be discriminatory if persons who breach the law are punished but certain persons are subject to more severe punishment on account of characteristics likely to lead to the award of refugee status. The discriminatory element in the punishment imposed is essential. Persecution may be deemed to exist in the event of a disproportionate sentence, provided that there is a link with one of the grounds of persecution referred to in Article 1A.

(c) *Breach of a criminal law provision on account of the grounds of persecution*

Intentional breach of a criminal law provision — whether applicable universally or to certain categories of persons — on account of the grounds of persecution must be clearly the result of pronouncements or participation in certain activities in the country of origin or be the objective consequence of characteristics of the asylum-seeker liable to

lead to the grant of refugee status. The deciding factors are the nature of the punishment, the severity of the punishment in relation to the offence committed, the legal system and the human rights situation in the country of origin. Consideration should be given to whether the intentional breach of the criminal law provision can be deemed unavoidable in the light of the individual circumstances of the person involved and the situation in the country of origin.

5.2. Persecution by third parties

Persecution by third parties will be considered to fall within the scope of the Geneva Convention where it is based on one of the grounds in Article 1A of that Convention, is individual in nature and is encouraged or permitted by the authorities. Where the official authorities fail to act, such persecution should give rise to individual examination of each application for refugee status, in accordance with national judicial practice, in the light in particular of whether or not the failure to act was deliberate. The persons concerned may be eligible in any event for appropriate forms of protection under national law.

6. Civil war and other internal or generalized armed conflicts

Reference to a civil war or internal or generalized armed conflict and the dangers which it entails is not in itself sufficient to warrant the grant of refugee status. Fear of persecution must in all cases be based on one of the grounds in Article 1A of the Geneva Convention and be individual in nature.

In such situations, persecution may stem either from the legal authorities or third parties encouraged or tolerated by them, or from *de facto* authorities in control of part of the territory within which the State cannot afford its nationals protection.

In principle, use of the armed forces does not constitute persecution where it is in accordance with international rules of war and internationally recognized practice, however, it becomes persecution where, for instance, authority is established over a particular area and its attacks on opponents or on the population fulfil the criteria in section 4.

In other cases, other forms of protection may be provided under national legislation.

7. Grounds of persecution

7.1. Race

The concept of race should be understood in the broad sense and include membership of different ethnic groups. As a general rule, persecution should be deemed to be founded on racial grounds where the persecutor regards the victim of his persecution as belonging to a racial group other than his own, by reason of a real or supposed difference, and this forms the grounds for his action.

7.2. Religion

The concept of religion may be understood in the broad sense and include theistic, non-theistic and atheistic beliefs.

Persecution on religious grounds may take various forms, such as a total ban on worship and religious instruction, or severe discriminatory measures against persons belonging to a particular religious group. For persecution to occur, the interference and impairment suffered must be sufficiently severe in the light of the criteria referred to in section 4 of this Joint Position. This may apply where, over and above measures essential to maintain public order, the State also prohibits or penalizes religious activity even in private life.

Persecution on religious grounds may also occur where such interference targets a person who does not wish to profess any religion, refuses to take up a particular religion or does not wish to comply with all or part of the rites and customs relating to a religion.

7.3. Nationality

This should not be confined exclusively to the idea of citizenship but should also include membership of a group determined by its cultural or linguistic identity or its relationship with the population of another State.

7.4. Political opinions

Holding political opinions different from those of the government is not in itself a sufficient ground for securing refugee status; the applicant must show that:

- the authorities know about his political opinions or attribute them to him,
- those opinions are not tolerated by the authorities,
- given the situation in his country he would be likely to be persecuted for holding such opinions.

7.5. *Social group*

A specific social group normally comprises persons from the same background, with the same customs or the same social status, etc.

Fear of persecution cited under this heading may frequently overlap with fear of persecution on other grounds, for example race, religion or nationality.

Membership of a social group may simply be attributed to the victimized person or group by the persecutor.

In some cases, the social group may not have existed previously but may be determined by the common characteristics of the victimized persons because the persecutor sees them as an obstacle to achieving his aims.

8. Relocation within the country of origin

Where it appears that persecution is clearly confined to a specific part of a country's territory, it may be necessary, in order to check that the condition laid down in Article 1A of the Geneva Convention has been fulfilled, namely that the person concerned 'is unable or, owing to such fear (of persecution), is unwilling to avail himself of the protection of that country', to ascertain whether the person concerned cannot find effective protection in another part of his own country, to which he may reasonably be expected to move.

9. Refugee *sur place*

The fear of persecution need not necessarily have existed at the time of an asylum-seeker's departure from his country of origin. An individual who had no reason to fear persecution on leaving his country of origin may subsequently become a refugee *sur place*. A well-founded fear of persecution may be based on the fact that the situation in his country of origin has changed since his departure, with serious consequences for him, or on his own actions.

In any event the asylum-related characteristics of the individual should be such that the authorities in the country of origin know or could come to know of them before the individual's fear of persecution can be justified.

9.1. *Fear arising from a new situation in the country of origin after departure*

Political changes in the country of origin may justify fear of persecution, but only if the asylum-seeker can demonstrate that as a result of those changes he would personally have grounds to fear persecution if he returned.

9.2. *Fear on account of activities outside the country of origin*

Refugee status may be granted if the activities which gave rise to the asylum-seeker's fear of persecution constitute the expression and continuation of convictions which he had held in his country of origin or can objectively be regarded as the consequence of the asylum-related characteristics of the individual. However, such continuity must not be a requirement where the person concerned was not yet able to establish convictions because of age.

On the other hand, if it is clear that he expresses his convictions mainly for the purpose of creating the necessary conditions for being admitted as a refugee, his activities cannot in principle furnish grounds for admission as a refugee; this does not prejudice his right not to be returned to a country where his life, physical integrity or freedom would be in danger.

10. Conscientious objection, absence without leave and desertion

The fear of punishment for conscientious objection, absence without leave or desertion is investigated on an individual basis. It should in itself be insufficient to justify recognition of refugee status. The penalty must be assessed in particular in accordance with the principles set out in point 5.

In cases of absence without leave or desertion, the person concerned must be accorded refugee status if the conditions under which military duties are performed themselves constitute persecution.

Similarly, refugee status may be granted, in the light of all the other requirements of the definition, in cases of punishment of conscientious objection or deliberate absence without leave and

desertion on grounds of conscience if the performance of his military duties were to have the effect of leading the person concerned to participate in acts falling under the exclusion clauses in Article 1F of the Geneva Convention.

11. Cessation of refugee status (Article 1C)

Whether or not refugee status may be withdrawn on the basis of Article 1C of the Geneva Convention is always investigated on an individual basis.

The Member States should make every effort, by exchanging information, to harmonize their practice with regard to the application of the cessation clauses of Article 1C wherever possible.

The circumstances in which the cessation clause in Article 1C may be applied should be of a fundamental nature and should be determined in an objective and verifiable manner. Information provided by the Centre for Information, Discussion and Exchange on Asylum (Cirea) and the UNHCR may be of considerable relevance here.

12. Article 1D of the Geneva Convention

Any person who deliberately removes himself from the protection and assistance referred to in Article 1D of the Geneva Convention is no longer automatically covered by that Convention. In such cases, refugee status is in principle to be determined in accordance with Article 1A.

13. Article 1F of the Geneva Convention

The clauses in Article 1F of the Geneva Convention are designed to exclude from protection under that Convention persons who cannot enjoy international protection because of the seriousness of the crimes which they have committed.

This may also be applied where the acts become known after the grant of refugee status (see point 11).

In view of the serious consequences of such a decision for the asylum-seeker, Article 1F must be used with care and after thorough consideration, and in accordance with the procedures laid down in national law.

13.1. Article 1F (a)

The crimes referred to in Article 1F (a) are those defined in international instruments to which the Member States have acceded, and in resolutions adopted by the United Nations or other international or regional organizations to the extent that they have been accepted by the Member States.

13.2. Article 1F (b)

The severity of the expected persecution is to be weighed against the nature of the criminal offence of which the person concerned is suspected.

Particularly cruel actions, even if committed with an allegedly political objective, may be classified as serious non-political crimes. This applies both to the participants in the crime and to its instigators.

13.3. Article 1F (c)

The purposes and principles referred to in Article 1F (c) are in the first instance those laid down in the Charter of the United Nations, which determines the obligations of the States party to it in their mutual relations, particularly for the purpose of maintaining peace, and with regard to human rights and fundamental freedoms.

Article 1F (c) applies to cases in which those principles have been breached and is directed notably at persons in senior positions in the State who, by virtue of their responsibilities, have ordered or lent their authority to action at variance with those purposes and principles as well as at persons who, as members of the security forces, have been prompted to assume personal responsibility for the performance of such action.

In order to determine whether an action may be deemed contrary to the purposes and principles of the United Nations, Member States should take account of the conventions and resolutions adopted in this connection under the auspices of the United Nations.

Done at Brussels, 4 March 1996.

For the Council
The President
P. BARATTA

A4-0315/96

Resolution on the Council Resolution on minimum guarantees for asylum procedures (5585/95 - C4-0356/95)

The European Parliament,

- having regard to the Council resolution of 20 June 1995 on minimum guarantees for asylum procedures (5585/95 - C4-0356/95)¹,
 - having regard to the Universal Declaration of Human Rights of 10 December 1948,
 - having regard to the European Convention for the Protection of Human Rights and Fundamental Freedoms, and to the Seventh Protocol thereto,
 - having regard to the Geneva Convention of 1951 relating to the Status of Refugees and to the Protocol of 1967,
 - having regard to the International Covenant on Civil and Political Rights,
 - having regard to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 10 December 1984,
 - having regard to Articles K to K.9 and the declaration on asylum in the Final Act of the Treaty on European Union,
 - having regard to UNHCR Executive Committee Conclusions 8, 15, 22, 30, 44, 58, 64, 65, 68 and 73,
 - having regard to the general legal principles applicable in the Member States,
 - having regard to its resolution of 21 September 1995 on the Communication from the Commission to the Council and the European Parliament on immigration and asylum policy²,
 - having regard to its resolution of 18 November 1992 on the harmonization within the European Communities of asylum law and policies³,
 - having regard to the London Resolutions of 30 November and 1 December 1992 of the Council of Ministers of Justice and Home Affairs⁴,
 - having regard to the report by the Committee on Civil Liberties and Internal Affairs and the opinions of the Committee on Legal Affairs and Citizens' Rights and the Committee on Women's Rights (A4-0315/96),
- A. whereas the resolution on minimum guarantees for asylum procedures is a good starting point which sets out a number of important principles whose further development could promote the objective of harmonization,
- B. whereas the Council Resolution has no binding statutory effect, and whereas non-binding guarantees are not guarantees and must therefore be transposed into Community and national law;
- C. whereas harmonization of asylum policy in the Member States is an essential prerequisite if constitutional standards are to be guaranteed throughout the European Union;
- D. whereas the Council and the Commission have omitted to consult the European Parliament pursuant to Article K.6 of the Treaty on European Union,

¹ OJ C 274, 19.9.1996, p. 13.

² OJ C 269, 16.10.1995, p. 137.

³ OJ C 337, 21.12.1992, p. 97.

⁴ 10518/92 (Press 230 - G)

- E. whereas most refugees come from non-European countries and should be taken care of in their own region,
- F. whereas a legislative and procedural distinction needs to be made between asylum-seekers and other third-country nationals,
- G. whereas an asylum seeker should only be deported to the country of origin if it has been established that a return to the country of origin would not involve a violation of Article 33 of the Geneva Convention of 1951 (non-refoulement),
- H. whereas applications for asylum are increasingly being made at borders,
- I. whereas the concept of safe third countries is regarded as a means of determining the country responsible for processing an application for asylum, thereby avoiding 'orbiting',
- J. whereas effective procedural protection of rights is conditional on the following:
- the asylum procedure must offer all asylum-seekers the opportunity of submitting their applications for asylum as swiftly as possible,
 - the parties must have guaranteed legal and linguistic aid,
 - the examination of the facts and the freedom to review them must enable the judicial authorities to include all the essential features in their decision,
 - asylum applications must be assessed by an independent specialist body with exclusive responsibility for assessing such requests,
 - procedures must be available for a negative decision in the asylum procedure to be reviewed by an independent authority; such procedures should in general have a suspensive effect except in the case of manifestly unfounded asylum applications;
- K. whereas certain groups of asylum-seekers such as women and unaccompanied minors must be given a special interview by contact officials with specific training in dealing with such groups,
- L. whereas freedom from detention is a fundamental human right, as set out in Article 9 of the Universal Declaration on Human Rights and Article 5 of the European Convention for the Protection of Human Rights and Fundamental Freedoms,
- M. whereas the return of persons whose asylum applications have been rejected in a fair and satisfactory procedure should be guided by the principles of safety and dignity,
- N. whereas the Council resolution can be approved subject to the following,
- O. whereas the Council resolution needs to be supplemented in a number of key areas,
1. Voices once again its indignation at the daily suffering to which thousands of men and women are exposed on political or religious grounds in a series of countries;
 2. Calls for the European Parliament to be consulted, pursuant to Article K.6, before the Council adopts decisions on the basis of the EU Treaty;
 3. Calls in general for documents and decisions on the Council to be public in future and, in particular, seeks an end to the closed nature of the activities of the K.4 Committee, the working parties reporting to that Committee and the CIREA and CIREFI coordinating centres; calls likewise for Parliament to be regularly updated on the work being done in this area and for due account to be taken of Parliament's views;

4. Takes the view that this resolution and other Council decisions of a general effect in the field of asylum policy are not entirely binding, because they are pseudo-legislation and quite wrongly removed from parliamentary scrutiny and checks by the Court, and hence unacceptable as forms of Union legislation;
5. Calls on the Council to make asylum policy (Article K.1(1) of the Treaty on European Union) a matter of Community competence and to harmonize it in strict compliance with the principles of the Geneva Convention on Refugee Status in order to avoid the problems outlined above;
6. Calls, in so far as communitization of asylum policy is not feasible in the short term, for the introduction of comprehensive European rules on the right of asylum and the granting of protection to political refugees in strict compliance with the principles of the Geneva Convention on Refugees, in a legal act which is binding in international law;
7. Calls on the Council to establish in a clear and binding manner that every Member State shall consider as clearly unfounded any request for asylum or for refugee status submitted by a national of another Member State and shall in any event reject such a request;
8. Believes there is a need for contact and decision-taking officials to have expertise in the field of human rights and international and national refugees law;
9. Calls for decisions on asylum applications to be taken within a reasonable period, taking account, however, of the complexity of certain applications;
10. Calls on the Member States, when drawing up their joint situation reports on certain third countries of origin of asylum seekers, to take account of whether the UNHCR's Centre for Documentation for Refugees and international human rights organizations have been able to monitor respect for human rights;
11. Calls on the Member States to follow the recommendations of UNHCR, which, in accordance with paragraph 65 of the Handbook on Procedures and Criteria for Determining Refugee Status, reaffirms that the Geneva Convention applies to persons who are the victims of the actions of certain groups when the national authorities are clearly unable to protect them;
12. Calls for asylum-seekers to be offered free legal aid, as provided for in national procedural laws, as well as linguistic assistance, if they are not able to afford it;
13. Calls for appeals against rulings that asylum applications are manifestly unfounded to be referred to a higher legal authority established by law which is independent and impartial and competent to take binding decisions as rapidly as possible;
14. Calls for the principle of the suspensive effect of the appeal to be limited only in the case of asylum applications rejected as manifestly unfounded - applicants should not be deported without having had the opportunity to apply for the suspensive effect of their appeals to be restored;
15. Believes it is necessary for Member States to secure guarantees, prior to deporting an asylum-seeker to a safe third country, that the asylum-seeker will be admitted to the procedure, that there will be an assessment of the substance of the asylum application and that the principle of non-refoulement is respected;
16. Believes it is important to allow the asylum seeker enough time to prepare for the interview to assess his application, and for the interview itself; a report in a language understood by the asylum seeker should also be drawn up on the interview and the asylum seeker, or his legal representative, should have the right to inspect it;

17. Calls for proper reasons to be given for decisions on asylum applications, so that it is clear what information was taken into account in the decision, why the information led to the decision and why any other information that was available was not taken into account;
18. Stresses that the authorities responsible for guarding borders must have no responsibility for a substantive examination of asylum applications;
19. Calls, in cases where entry is refused on the grounds that the application for asylum is manifestly unfounded and the guarantee of temporary legal protection does not apply, for the decision to refuse entry to be taken by a central authority with the necessary knowledge and experience in the field of asylum law;
20. Calls for all decisions in the asylum procedure to be made known in writing in a language understood by the applicant, including the decision that the principle of a safe third country is applicable in accordance with national law;
21. Insists that all individuals and all sections of the population of a country must be safe from political persecution; it must be possible for the legal presumption of freedom from persecution to be overturned in the event of individuals presenting conclusive, substantiated and credible statements of individual grounds for persecution; calls on the Member States to agree upon a harmonised list of safe countries of origin, to base this list on detailed analysis and to submit it to the European Parliament for approval;
22. Calls for asylum-seekers to be given an opportunity, in the form of an individual procedure, of contesting the presumed safety of the country of origin; the applicant must be given the opportunity in this procedure to show that his application is based on special circumstances which, despite the situation in his country of origin, could reasonably suggest that the asylum seeker justifiably fears persecution;
23. Calls for the accession requirements of future Member States of the Union to contain conditions in respect of asylum policy;
24. Believes it is necessary for unaccompanied minors to have an opportunity of submitting asylum applications of their own; where necessary, a guardian or supporter should be specifically designated to look after a minor applying for asylum;
25. Welcomes the fact that women's needs are recognised for the first time in the Council resolution, but considers that the wording of the resolution leaves too much leeway for Member States to continue to take no action to support female asylum seekers;
26. Recommends that the EU and its Member States, following the line taken by the Council of Europe, Canada, the USA and the UNHCR, recognize the right of asylum for women and girls who suffer or run the risk of suffering discrimination because of their sex;
27. Urges all Member States to adopt guidelines on women asylum seekers as agreed by the UNHCR Executive Committee Conclusions No 73 of 1993, these guidelines to include advice on responding to sexual violence;
28. Believes it is crucial that sexual violence be recognised as a form of torture, particularly given the use of rape as a weapon of war and the cultural traditions of certain countries which involve gender persecution;
29. Highlights the need for adequate information on the human rights situation for women as well as the specific forms of persecution to which women are often subjected, especially in countries which are the main source of asylum applications in the EU;

30. Calls for all Member States to establish training programmes to ensure that their officials dealing with asylum applications are sufficiently aware of issues related to gender-based persecution and the needs of traumatised women seeking asylum; calls on Member States to put into effect as rapidly as possible the recommendation (made in paragraph 28 of the Council resolution) that as far as possible women officials and interpreters should be responsible for the reception of women asylum seekers;
31. Stresses that where asylum seekers are accompanied by their families an independent legal status should be granted to women so that they do not lose their independent rights in the event of death, divorce or the breakdown of their relationship;
32. Calls for special programmes for women needing medical and psycho-social care following sexual violence;
33. Stresses that the Member States must establish action programmes which enable women refugees to gain economic independence rapidly;
34. Calls, furthermore, for female asylum-seekers to have the opportunity of submitting applications of their own; if required, they should be heard separately from their husbands by female contact officials in an independent, fully valid interview in the framework of a joint application for asylum;
35. Notes with concern that there is still no satisfactory policy with regard to asylum seekers who have exhausted every legal avenue, whose applications have been rejected or who are difficult to deport, or to illegal immigrants;
36. Calls for full compliance with the guarantees contained in Article 9 of the Universal Declaration of Human Rights, Article 5 of the European Convention on Human Rights and the UNHCR guidelines, and for free and permanent access to be granted to authorized NGOs and lawyers even in the event of detention being used;
37. Refers the Commission to its undertaking to submit in 1996 a convention on asylum policy and calls not only for existing agreements to be codified but also for existing shortcomings in asylum law to be rectified, in the light of the criticisms made in the foregoing;
38. Takes the view that, in harmonizing the procedures, the Governments and Parliaments of the Member States should take account of the contents of this resolution and could incorporate the clarifications called for by Parliament in its assessment of the Council resolution;
39. Wishes to be consulted by the Council should the latter decide to propose changes to its resolution on minimum guarantees for asylum procedures or to replace it;
40. Instructs its President to forward this resolution to the Council, the Commission, the governments and parliaments of the Member States and applicant countries, the Council of Europe, the UNHCR, the ECRE and Amnesty International.

Annexes

Chapter 7

30. 3. 95

[EN]

Official Journal of the European Communities

No C 78/1

I

(Information)

COUNCIL

COUNCIL ACT

of 10 March 1995

drawing up the Convention on simplified extradition procedure between the Member States of the European Union

(95/C 78/01)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article K.3 (2) (c) thereof,

Whereas, for the purposes of achieving the objectives of the Union, the Member States regard the rules governing simplified extradition procedures between the Member States of the European Union as a matter of common interest coming under the cooperation provided for in Title VI of the Treaty;

HAVING DECIDED that the Convention, the text of which is given in the Annex and which is signed today by the Representatives of the Governments of the Member States of the Union, is hereby drawn up;

RECOMMENDS that it be adopted by the Member States in accordance with their respective constitutional rules.

Done at Brussels, 10 March 1995.

*For the Council**The President*

P. MÉHAIGNERIE

CONVENTION

drawn up on the basis of Article K.3 of the Treaty on European Union, on simplified extradition procedure between the Member States of the European Union

THE HIGH CONTRACTING PARTIES to this Convention, Member States of the European Union,

REFERRING to the Council Act of 9 March 1995,

DESIRING to improve judicial cooperation between the Member States in criminal matters, with regard both to proceedings and the execution of sentences,

RECOGNIZING the importance of extradition in judicial cooperation in order to achieve these objectives,

CONVINCED of the need to simplify extradition procedures to the extent that this is compatible with their fundamental legal principles, including the principles of the European Convention for the Protection of Human Rights and Fundamental Freedoms,

NOTING that, in a large number of extradition proceedings, the person claimed consents to his surrender,

NOTING that it is desirable to reduce to a minimum, in such cases, the time necessary for the extradition and any period of detention for extradition purposes,

CONSIDERING that, as a result, application of the European Convention on Extradition of 13 December 1957 should be made easier by simplifying and improving extradition procedures,

CONSIDERING that the provisions of the European Convention on Extradition remain applicable for all matters not covered by this Convention,

HAVE AGREED ON THE FOLLOWING PROVISIONS:

*Article 1***General provisions**

1. The aim of this Convention is to facilitate the application, between the Member States of the European Union, of the European Convention on Extradition, by supplementing its provisions.

2. Paragraph 1 shall not affect the application of more favourable provisions in the bilateral and multilateral agreements in force between Member States.

*Article 2***Obligation to surrender persons**

Member States undertake to surrender to each other under simplified procedures as provided for by this Convention persons sought for the purpose of extradition, subject to consent of such persons and the agreement of the requested State given in accordance with this Convention.

*Article 3***Conditions for surrender**

1. Pursuant to Article 2, any person who is the subject of a request for provisional arrest in accordance with Article 16 of the European Convention on Extradition shall be surrendered in accordance with Articles 4 to 11 and Article 12 (1) of the present Convention.

2. The surrender referred to in paragraph 1 shall not be subject to submission of a request for extradition or the documents required by Article 12 of the European Convention on Extradition.

*Article 4***Information to be provided**

1. The following information from the requesting State shall be regarded as adequate for the information of the arrested person for the purpose of applying Articles 6 and 7 and for the competent authority referred to in Article 5 (2):

(a) the identity of the person sought;

- (b) the authority requesting the arrest;
- (c) the existence of an arrest warrant or other document having the same legal effect or of an enforceable judgment;
- (d) the nature and legal description of the offence;
- (e) a description of the circumstances in which the offence was committed, including the time, place and degree of involvement of the person sought;
- (f) in so far as possible, the consequences of the offence.

2. Notwithstanding paragraph 1, further information may be requested if the information provided for in the said paragraph is insufficient to allow the competent authority of the requested State to give agreement to the surrender.

Article 5

Consent and agreement

1. The consent of the arrested person shall be given in accordance with Articles 6 and 7.
2. The competent authority of the requested State shall give its agreement in accordance with its national procedures.

Article 6

Information to be given to the person

Where a person wanted for the purpose of extradition is arrested on the territory of another Member State, the competent authority shall inform that person, in accordance with its national law, of the request relating to him and of the possibility of his consent to his surrender to the requesting State under the simplified procedure.

Article 7

Establishing consent

1. The consent of the arrested person and, if appropriate, his express renunciation of entitlement to the speciality rule, shall be given before a competent judicial authority of the requested State in accordance with the national law of that State.
2. Each Member State shall adopt the measures necessary to ensure that consent and, where appropriate, renunciation, as referred to in paragraph 1, are established in such a way as to show that the person concerned has expressed them voluntarily and in full awareness of the consequences. To that end, the arrested person shall have the right to legal counsel.

3. Consent and, where appropriate, renunciation, as referred to in paragraph 1, shall be recorded; the recording procedure shall be in accordance with the national law of the requested State.

4. Consent and, where appropriate, renunciation, as referred to in paragraph 1, may not be revoked. Upon deposit of their instruments of ratification, acceptance, approval or accession, Member States may indicate, in a declaration, that consent and, where appropriate, renunciation may be revoked, in accordance with the rules applicable under national law. In this case, the period between the notification of consent and that of its revocation shall not be taken into consideration in establishing the periods provided for in Article 16 (4) of the European Convention on Extradition.

Article 8

Notification of consent

1. The requested State shall immediately notify the requesting State of the consent of the person. So that the requesting State may submit, where applicable, a request for extradition, the requested State shall notify it, no later than 10 days after provisional arrest, whether or not the person has given his consent.
2. Notification referred to in paragraph 1 shall be made directly between the competent authorities.

Article 9

Renunciation of entitlement to the speciality rule

Each Member State may declare, upon deposit of its instrument of ratification, acceptance, approval or accession, or at any other time, that the rules laid down in Article 14 of the European Convention on Extradition do not apply where the person, in accordance with Article 7 of the present Convention:

- (a) consents to extradition; or
- (b) consents to extradition and expressly renounces his entitlement to the speciality rule.

Article 10

Notification of the extradition decision

1. Notwithstanding the rules laid down in Article 18 (1) of the European Convention on Extradition, the extradition decision taken pursuant to the simplified procedure and the information concerning the simplified extradition procedure shall be notified directly between the competent authority of the requested State and the authority of the requesting State which has requested provisional arrest.

2. The decision referred to in paragraph 1 shall be notified at the latest within 20 days of the date on which the person consented.

Article 11

Deadline for surrender

1. Surrender shall take place within 20 days of the date on which the extradition decision was notified under the conditions laid down in Article 10 (2).

2. After the deadline laid down in paragraph 1, if the person is being held, he shall be released on the territory of the requested State.

3. Should surrender of the person within the deadline laid down in paragraph 1 be prevented by circumstances beyond its control, the authority concerned referred to in Article 10 (1) shall so inform the other authority. The two authorities shall agree on a new surrender date. In that event, surrender will take place within 20 days of the new date thus agreed. If the person in question is still being held after expiry of this period, he shall be released.

4. Paragraphs 1, 2 and 3 of this Article shall not apply in cases where the requested State wishes to make use of Article 19 of the European Convention on Extradition.

Article 12

Consent given after expiry of the deadline laid down in Article 8 or in other circumstances

1. Where an arrested person has given his consent after expiry of the deadline of 10 days laid down in Article 8, the requested State:

— shall implement the simplified procedure as provided for in this Convention if a request for extradition within the meaning of Article 12 of the European Convention on Extradition has not yet been received by it,

— may use this simplified procedure if a request for extradition within the meaning of Article 12 of the European Convention on Extradition has reached it in the meantime.

2. Where no request for provisional arrest has been made, and where consent has been given after receipt of a request for extradition, the requested State may avail itself of the simplified procedure as provided for in this Convention.

3. Upon deposit of its instrument of ratification, acceptance, approval or accession, each Member State shall state whether it intends to apply paragraph 1, second indent, and paragraph 2 and, if so, under what conditions.

Article 13

Re-extradition to another Member State

Where the speciality rule has not been applied to the person extradited, in accordance with the declaration of the Member State provided for in Article 9 of this Convention, Article 15 of the European Convention on Extradition shall not apply to the re-extradition of this person to another Member State, unless the aforementioned declaration provides otherwise.

Article 14

Transit

In the event of transit under the conditions laid down in Article 21 of the European Convention on Extradition, where extradition under the simplified procedure is concerned, the following provisions shall apply:

(a) in an emergency, an application containing the information required in Article 4 may be made to the State of transit by any method which leaves a written record. The State of transit may make its decision known using the same method;

(b) the information referred to in Article 4 must be sufficient to enable the competent authority of the State of transit to ascertain whether extradition is under the simplified extradition procedure and to take the constraint measures needed for execution of the transit *vis-à-vis* the extradited person.

Article 15

Determining the competent authorities

Upon deposit of its instrument of ratification, acceptance, approval or accession, each Member State shall indicate in a statement which authorities are competent within the meaning of Articles 4 to 8, 10 and 14.

Article 16

Entry into force

1. This Convention shall be subject to ratification, acceptance or approval. The instruments of ratification, acceptance or approval shall be deposited with the General Secretariat of the Council of the European Union. The Secretary-General to the Council shall notify all Member States of such deposit.

2. This Convention shall enter into force 90 days after the date of deposit of the instrument of ratification, acceptance or approval by the last Member State to carry out this formality.

3. Until this Convention enters into force, any Member State may, when depositing its instrument of ratification, acceptance or approval, or at any other date, declare that the Convention shall apply to it in its relations with Member States that have made the same declaration 90 days after the date of deposit of its declaration.

4. Any declaration made pursuant to Article 9 shall take effect 30 days after deposit thereof, but no earlier than the date of the entry into force of this Convention or of the application thereof of the Member State concerned.

5. This Convention shall apply only to requests submitted after the date on which it enters into force or is applied between the requested State and the requesting State.

Article 17

Accession

1. This Convention shall be open to accession by any State that becomes a member of the European Union.

2. The text of this Convention in the language of the acceding State, drawn up by the General Secretariat of the Council of the European Union and approved by all the Member States, shall be equally authentic with the other authentic texts. The Secretary-General shall transmit a certified true copy of the text to each Member State.

3. The instruments of accession shall be deposited with the General Secretariat of the Council of the European Union.

4. This Convention shall enter into force with respect to any State that accedes to it 90 days after the deposit of its instrument of accession or the date of entry into force of the Convention if it has not already entered into force at the time of expiry of the said period of 90 days.

5. Where this Convention is not yet in force at the time of the deposit of their instrument of accession, Article 16 (3) shall apply to acceding Member States.

En fe de lo cual los plenipotenciarios abajo firmantes suscriben el presente Convenio.

Til bekræftelse heraf har undertegnede befuldmægtigede underskrevet denne konvention.

Zu Urkund dessen haben die unterzeichneten Bevollmächtigten ihre Unterschriften unter dieses Übereinkommen gesetzt.

Σε πίστωση των ανωτέρω, οι υπογράφοντες πληρεξούσιοι έθεσαν την υπογραφή τους κάτω από την παρούσα σύμβαση.

In witness whereof, the undersigned Plenipotentiaries have hereunto set their hands.

En foi de quoi, les plénipotentiaires soussignés ont apposé leurs signatures au bas de la présente convention.

Dá fhianú sin, chuir na Lánchumhachtaigh thíos-sinithe a lámh leis an gCoinbhinsiún seo.

In fede di che, i plenipotenziari sottoscritti hanno apposto le loro firme in calce alla presente convenzione.

Ten blijke waarvan de ondergetekende gevolmachtigden hun handtekening onder deze Overeenkomst hebben gesteld.

Em té do que, os plenipotenciários abaixo-assinados apuseram as suas assinaturas no final da presente convenção.

Tämän vakuudeksi alla mainitut täysivaltaiset edustajat ovat allekirjoittaneet tämän yleissopimuksen.

Till bekræftelse härav har undertecknade befullmäktigade ombud undertecknat denna konvention.

Hecho en Bruselas, el diez de marzo de mil novecientos noventa y cinco, en un ejemplar único, en lenguas alemana, inglesa, danesa, española, finlandesa, francesa, griega, irlandesa, italiana, neerlandesa, portuguesa y sueca, cuyos textos son igualmente auténticos y que será depositado en los archivos de la Secretaría General del Consejo de la Unión Europea. El Secretario General remitirá a cada Estado miembro una copia autenticada de dicho texto.

Udfærdiget i Bruxelles, den tiende mars nitten hundrede og femoghalvfems, i ét eksemplar på dansk, engelsk, finsk, fransk, græsk, irsk, italiensk, nederlandsk, portugisisk, spansk, svensk og tysk, hvilke tekster alle har samme gyldighed, og er deponeret i arkiverne i Generalsekretariatet for Rådet for Den Europæiske Union. Generalsekretæren fremsender en bekræftet genpart til hver medlemsstat.

Geschehen zu Brüssel am zehnten März neunzehnhundertfünfundneunzig in einer Urschrift in dänischer, deutscher, englischer, finnischer, französischer, griechischer, irischer, italienischer, niederländischer, portugiesischer, schwedischer und spanischer Sprache, wobei jeder Wortlaut gleichermaßen verbindlich ist; die Urschrift wird im Archiv des Generalsekretariats des Rates der Europäischen Union hinterlegt. Der Generalsekretär übermittelt jedem Mitgliedstaat eine beglaubigte Abschrift dieser Urschrift.

Έγινε στις Βρυξέλλες, στις δέκα Μαρτίου χίλια εννιακόσια ενενήντα πέντε, σε ένα μόνον αντίτυπο, στην αγγλική, γαλλική, γερμανική, δανική, ελληνική, ιρλανδική, ισπανική, ιταλική, ολλανδική, πορτογαλική, σουηδική και φινλανδική γλώσσα, όλα δε τα κείμενα είναι εξίσου αυθεντικά και κατατίθενται στα αρχεία της Γενικής Γραμματείας του Συμβουλίου της Ευρωπαϊκής Ένωσης. Ο Γενικός Γραμματέας διαβιβάζει επικυρωμένο αντίγραφο σε κάθε κράτος μέλος.

Done at Brussels, this tenth day of March in the year one thousand nine hundred and ninety-five in a single original, in the Danish, Dutch, English, Finnish, French, German, Greek, Irish, Italian, Portuguese, Spanish and Swedish languages, each text being equally authentic, such original remaining deposited in the archives of the General Secretariat of the Council of the European Union, which shall transmit a certified copy to each of the Member States.

Fait à Bruxelles, le dix mars mil neuf cent quatre-vingt-quinze, en un exemplaire unique, en langues allemande, anglaise, danoise, espagnole, finnoise, française, grecque, irlandaise, italienne, néerlandaise, portugaise et suédoise, tous ces textes faisant également foi, exemplaire qui est déposé dans les archives du Secrétariat général du Conseil de l'Union européenne. Le Secrétaire général en transmet une copie certifiée conforme à chaque État membre.

Arna dhéanamh sa Bhruiséil, an deichiú la de Mhárta míle naoi géad nócha a cúig, i scríbhinn bhunaidh amháin sa Bhéarla, sa Danmhairgis, sa Fhionlainnis, sa Fhraincis, sa Ghaeilge, sa Ghearmáinis, sa Ghréigis, san Iodáilis, san Oilainnis, sa Phortaingéilis, sa Spáinnis agus sa tSualainnis agus comhúdarás ag na téacsanna i ngach ceann de na teangacha sin; déanfar an scríbhinn bhunaidh sin a thaisceadh i geartlann Ardrúnatocht Chombairle an Aontais Eorpaigh. Cuirfidh an tArdrúnai cóip dhilis dheimhnithe chuig gach Ballstát.

Fatto a Bruxelles, il dieci marzo millenovecentonovantacinque, in un unico esemplare in lingua danese, finlandese, francese, greca, inglese, irlandese, italiana, olandese, portoghese, spagnola, svedese e tedesca, i testi di ciascuna di queste lingue facenti ugualmente fede, esemplare depositato negli archivi del Segretariato generale dell'Unione europea, che ne trasmette copia certificata conforme a ciascuno Stato membro.

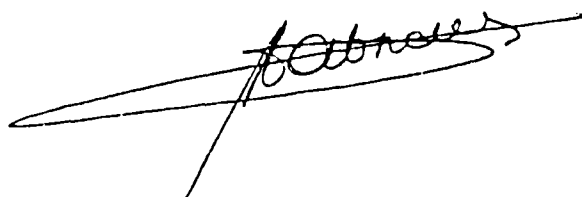
Gedaan te Brussel, de tiende maart negentienhonderdvijfenneentig, in één exemplaar, in de Deense, de Duitse, de Engelse, de Finse, de Franse, de Griekse, de Ierse, de Italiaanse, de Nederlandse, de Portugese, de Spaanse en de Zweedse taal, zijnde alle teksten gelijkelijk authentiek, dat wordt neergelegd in het archief van het Secretariaat-Generaal van de Raad van de Europese Unie. De Secretaris-Generaal zendt een voor eensluidend gewaarmerkt afschrift daarvan toe aan elke Lid-Staat.

Feito em Bruxelas, em dez de Março de mil novecentos e noventa e cinco, em exemplar único, nas línguas alemã, dinamarquesa, espanhola, finlandesa, francesa, grega, inglesa, irlandesa, italiana, neerlandesa, portuguesa e sueca, fazendo igualmente fé todos os textos, depositado nos arquivos do Secretariado-Geral do Conselho da União Europeia. O Secretário-Geral remeterá uma cópia autenticada a cada Estado-membro.

Tehty Brysselissä kymmenentenä päivänä maaliskuuta vuonna tuhatyhdeksänsataayhdeksänkymmentäviisi yhtenä ainoana kappaleena englannin, espanjan, hollannin, iirin, italian, kreikan, portugalin, ranskan, ruotsin, saksan, suomen ja tanskan kielellä kaikkien näiden tekstien ollessa yhtä todistusvoimaiset, ja se talletetaan Euroopan unionin neuvoston pääsihteeristön arkistoon. Pääsihteeristö toimittaa oikeaksi todistetun jäljennöksen siitä kaikille jäsenvaltioille.

Utfärdad i Bryssel den tionde mars år nittonhundra nitiofem i ett enda exemplar, på danska, engelska, finska, franska, grekiska, irländska, italienska, nederländska, portugisiska, spanska, svenska och tyska, varvid alla texter är lika giltiga, och deponerad i arkiven vid generalsekretariatet för Europeiska unionens råd. Generalsekreteraren skall vidarebefordra en bestyrkt kopia till varje medlemsstat.

Pour le gouvernement du royaume de Belgique
Voor de Regering van het Koninkrijk België
Für die Regierung des Königreichs Belgien



För regeringen för Kongeriget Danmark



Für die Regierung der Bundesrepublik Deutschland

Gerhard - Kromm
Dieterich - Ufer

Για την κυβέρνηση της Ελληνικής Δημοκρατίας

Loos

Por el Gobierno del Reino de España

M. J. ...
J. A. ...

Pour le gouvernement de la République française

M. J. ...

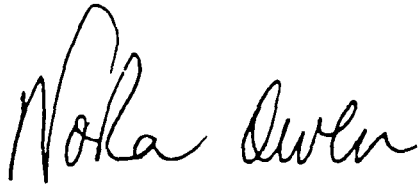
30. 3. 95

EN

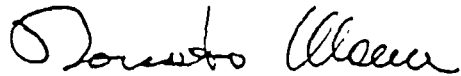
Official Journal of the European Communities

No C 78/9

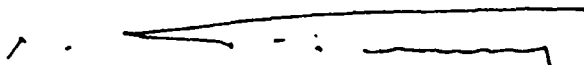
Thar ceann Rialtas na hÉireann
For the Government of Ireland



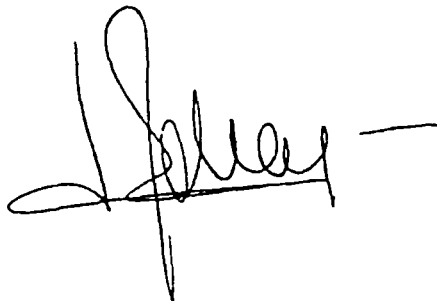
Per il governo della Repubblica italiana



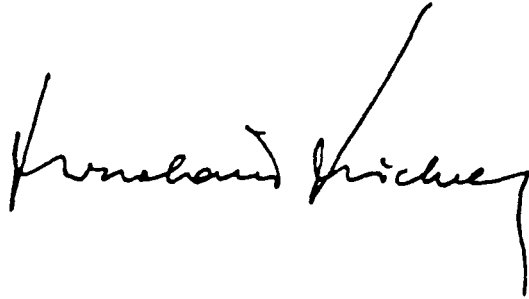
Pour le gouvernement du grand-duché de Luxembourg



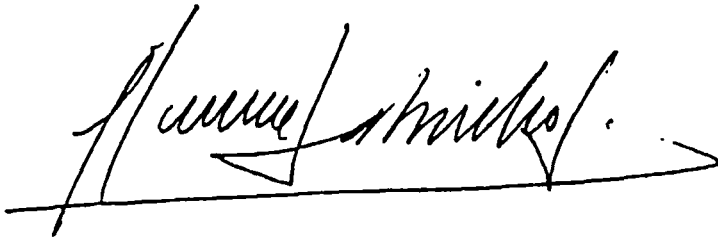
Voor de Regering van het Koninkrijk der Nederlanden



Für die Regierung der Republik Österreich



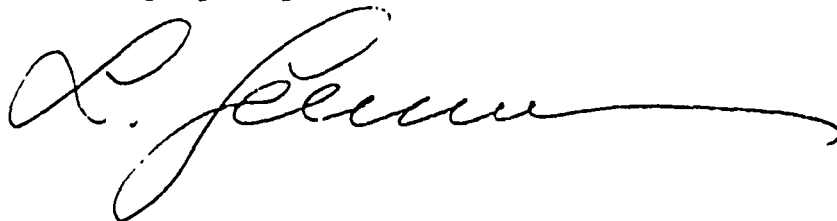
Pelo Governo da República Portuguesa



Suomen hallituksen puolesta



På svenska regeringens vägnar



For the Government of the United Kingdom of Great Britain and Northern Ireland



23. 10. 96

EN

Official Journal of the European Communities

No C 313/11

COUNCIL ACT
of 27 September 1996
drawing up the Convention relating to extradition between the Member States of the European
Union
(96/C 313/02)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article K.3 (2) (c) thereof,

Whereas, for the purposes of achieving the objectives of the Union, the Member States regard the improvement of extradition between the Member States of the European Union as a matter of common interest coming under the cooperation provided for in Title VI of the Treaty;

DECIDES that the Convention, including the Annex thereto, the text of which is appended hereto and which

is signed today by the Representatives of the Governments of the Member States of the Union, is hereby drawn up;

RECOMMENDS that it be adopted by the Member States in accordance with their respective constitutional rules.

Done at Brussels, 27 September 1996.

For the Council

The President

M. LOWRY

CONVENTION

drawn up on the basis of Article K.3 of the Treaty on European Union, relating to extradition between the Member States of the European Union

THE HIGH CONTRACTING PARTIES to this Convention, Member States of the European Union,

REFERRING to the Act of the Council of the European Union of 27 September 1996,

DESIRING to improve judicial cooperation between the Member States in criminal matters, with regard both to prosecution and to the execution of sentences,

RECOGNIZING the importance of extradition in judicial cooperation for the achievement of these objectives,

STRESSING that Member States have an interest in ensuring that extradition procedures operate efficiently and rapidly in so far as their systems of government are based on democratic principles and they comply with the obligations laid down by the Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950,

EXPRESSING their confidence in the structure and operation of their judicial systems and in the ability of all Member States to ensure a fair trial,

BEARING IN MIND that by Act of 10 March 1995 the Council drew up the Convention on simplified extradition procedure between the Member States of the European Union,

TAKING ACCOUNT of the interest in concluding a Convention between the Member States of the European Union supplementing the European Convention on Extradition of 13 December 1957 and the other Conventions in force on the matter,

CONSIDERING that the provisions of those Conventions remain applicable for all matters not covered by this Convention,

HAVE AGREED AS FOLLOWS:

Article 1

General provisions

1. The purpose of this Convention is to supplement the provisions and facilitate the application between the Member States of the European Union:

- of the European Convention on Extradition of 13 December 1957 (hereinafter referred to as the 'European Convention on Extradition'),
- the European Convention on the Suppression of Terrorism of 27 January 1977 (hereinafter referred to as the 'European Convention on the Suppression of Terrorism'),
- the Convention of 19 June 1990 applying the Schengen Agreement of 14 June 1985 on the gradual abolition of checks at their common borders in

relations between the Member States which are party to that Convention, and

- the first chapter of the Treaty on Extradition and Mutual Assistance in Criminal Matters between the Kingdom of Belgium, the Grand-Duchy of Luxembourg and the Kingdom of the Netherlands of 27 June 1962, as amended by the Protocol of 11 May 1974 (hereinafter referred to as the 'Benelux Treaty') in relations between the Member States of the Benelux Economic Union.

2. Paragraph 1 shall not affect the application of more favourable provisions in bilateral or multilateral agreements between Member States, nor, as provided for in Article 28 (3) of the European Convention on Extradition, shall it affect extradition arrangements agreed on the basis of uniform or reciprocal laws providing for the execution in the territory of a Member State of warrants of arrest issued in the territory of another Member State.

*Article 2***Extraditable offences**

1. Extradition shall be granted in respect of offences which are punishable under the law of the requesting Member State by deprivation of liberty or a detention order for a maximum period of at least 12 months and under the law of the requested Member State by deprivation of liberty or a detention order for a maximum period of at least six months.

2. Extradition may not be refused on the grounds that the law of the requested Member State does not provide for the same type of detention order as the law of the requesting Member State.

3. Article 2 (2) of the European Convention on Extradition and Article 2 (2) of the Benelux Treaty shall also apply where certain offences are punishable by pecuniary penalties.

*Article 3***Conspiracy and association to commit offences**

1. Where the offence for which extradition is requested is classified by the law of the requesting Member State as a conspiracy or an association to commit offences and is punishable by a maximum term of deprivation of liberty or a detention order of at least 12 months, extradition shall not be refused on the ground that the law of the requested Member State does not provide for the same facts to be an offence, provided the conspiracy or the association is to commit:

(a) one or more of the offences referred to in Articles 1 and 2 of the European Convention on the Suppression of Terrorism;

or

(b) any other offence punishable by deprivation of liberty or a detention order of a maximum of at least 12 months in the field of drug trafficking and other forms of organized crime or other acts of violence against the life, physical integrity or liberty of a person, or creating a collective danger for persons.

2. For the purpose of determining whether the conspiracy or the association is to commit one of the offences indicated under paragraph 1 (a) or (b) of this Article, the requested Member State shall take into consideration the information contained in the warrant of arrest or order having the same legal effect or in the

conviction of the person whose extradition is requested as well as in the statement of the offences envisaged in Article 12 (2) (b) of the European Convention on Extradition or in Article 11 (2) (b) of the Benelux Treaty.

3. When giving the notification referred to in Article 18 (2), any Member State may declare that it reserves the right not to apply paragraph 1 or to apply it under certain specified conditions.

4. Any Member State which has entered a reservation under paragraph 3 shall make extraditable under the terms of Article 2 (1) the behaviour of any person which contributes to the commission by a group of persons acting with a common purpose of one or more offences in the field of terrorism as in Articles 1 and 2 of the European Convention on the Suppression of Terrorism, drug trafficking and other forms of organized crime or other acts of violence against the life, physical integrity or liberty of a person, or creating a collective danger for persons, punishable by deprivation of liberty or a detention order of a maximum of at least 12 months, even where that person does not take part in the actual execution of the offence or offences concerned; such contribution shall be intentional and made having knowledge either of the purpose and the general criminal activity of the group or of the intention of the group to commit the offence or offences concerned.

*Article 4***Order for deprivation of liberty in a place other than a penitentiary institution**

Extradition for the purpose of prosecution shall not be refused on the ground that the request is supported, pursuant to Article 12 (2) (a) of the European Convention on Extradition or Article 11 (2) (a) of the Benelux Treaty, by an order of the judicial authorities of the requesting Member State to deprive the person of his liberty in a place other than a penitentiary institution.

*Article 5***Political offences**

1. For the purposes of applying this Convention, no offence may be regarded by the requested Member State as a political offence, as an offence connected with a political offence or an offence inspired by political motives.

2. Each Member State may, when giving the notification referred to in Article 18 (2), declare that it will apply paragraph 1 only in relation to:

(a) the offences referred to in Articles 1 and 2 of the European Convention on the Suppression of Terrorism;

and

(b) offences of conspiracy or association — which correspond to the description of behaviour referred to in Article 3 (4) — to commit one or more of the offences referred to in Articles 1 and 2 of the European Convention on the Suppression of Terrorism.

3. The provisions of Article 3 (2) of the European Convention on Extradition and of Article 5 of the European Convention on the Suppression of Terrorism remain unaffected.

4. Reservations made pursuant to Article 13 of the European Convention on the Suppression of Terrorism shall not apply to extradition between Member States.

Article 6

Fiscal offences

1. With regard to taxes, duties, customs and exchange, extradition shall also be granted under the terms of this Convention, the European Convention on Extradition and the Benelux Treaty in respect of offences which correspond under the law of the requested Member State to a similar offence.

2. Extradition may not be refused on the ground that the law of the requested Member State does not impose the same type of taxes or duties or does not have the same type of provisions in connection with taxes, duties, customs and exchange as the law of the requesting Member State.

3. When giving the notification referred to in Article 18 (2), any Member State may declare that it will grant extradition in connection with a fiscal offence only for acts or omissions which may constitute an offence in connection with excise, value-added tax or customs.

Article 7

Extradition of nationals

1. Extradition may not be refused on the ground that the person claimed is a national of the requested Member State within the meaning of Article 6 of the European Convention on Extradition.

2. When giving the notification referred to in Article 18 (2), any Member State may declare that it will not grant extradition of its nationals or will authorize it only under certain specified conditions.

3. Reservations referred to in paragraph 2 shall be valid for five years from the first day of application of this Convention by the Member State concerned. However,

such reservations may be renewed for successive periods of the same duration.

Twelve months before the date of expiry of the reservation, the depositary shall give notice of that expiry to the Member State concerned.

No later than three months before the expiry of each five-year period, the Member State shall notify the depositary either that it is upholding its reservation, that it is amending it to ease the conditions for extradition or that it is withdrawing it.

In the absence of the notification referred to in the preceding subparagraph, the depositary shall inform the Member State concerned that its reservation is considered to have been extended automatically for a period of six months, before the expiry of which the Member State must give notification. On expiry of that period, failure to notify shall cause the reservation to lapse.

Article 8

Lapse of time

1. Extradition may not be refused on the ground that the prosecution or punishment of the person would be statute-barred according to the law of the requested Member State.

2. The requested Member State shall have the option of not applying paragraph 1 where the request for extradition is based on offences for which that Member State has jurisdiction under its own criminal law.

Article 9

Amnesty

Extradition shall not be granted in respect of an offence covered by amnesty in the requested Member State where that State was competent to prosecute the offence under its own criminal law.

Article 10

Offences other than those upon which the request for extradition is based

1. A person who has been extradited may, in respect of offences committed before his surrender other than those upon which the request for extradition was based, without it being necessary to obtain the consent of the requested Member State:

(a) be prosecuted or tried where the offences are not punishable by deprivation of liberty;

- (b) be prosecuted or tried in so far as the criminal proceedings do not give rise to the application of a measure restricting his personal liberty;
- (c) be subjected to a penalty or a measure not involving the deprivation of liberty, including a financial penalty, or a measure in lieu thereof, even if it may restrict his personal liberty;
- (d) be prosecuted, tried, detained with a view to the execution of a sentence or of a detention order or subjected to any other restriction of his personal liberty if after his surrender he has expressly waived the benefit of the rule of speciality with regard to specific offences preceding his surrender.

2. Waiver on the part of the person extradited as referred to in paragraph 1 (d) shall be given before the competent judicial authorities of the requesting Member State and shall be recorded in accordance with that Member State's national law.

3. Each Member State shall adopt the measures necessary to ensure that the waiver referred to in paragraph 1 (d) is established in such a way as to show that the person has given it voluntarily and in full awareness of the consequences. To that end, the person extradited shall have the right to legal counsel.

4. When the requested Member State has made a declaration pursuant to Article 6 (3), paragraph 1 (a), (b) and (c) of this Article shall not apply to fiscal offences except those referred to in Article 6 (3).

Article 11

Presumption of consent of the requested Member State

Each Member State, when giving the notification referred to in Article 18 (2) or at any time, may declare that, in its relations with other Member States that have made the same declaration, consent for the purposes of Article 14 (1) (a) of the European Convention on Extradition and Article 13 (1) (a) of the Benelux Treaty is presumed to have been given, unless it indicates otherwise when granting extradition in a particular case.

Where in a particular case the Member State has indicated that its consent should not be deemed to have been given, Article 10 (1) still applies.

Article 12

Re-extradition to another Member State

1. Article 15 of the European Convention on Extradition and Article 14 (1) of the Benelux Treaty shall not apply to requests for re-extradition from one Member State to another.

2. When giving the notification referred to in Article 18 (2), a Member State may declare that Article 15 of the European Convention on Extradition and Article 14 (1) of the Benelux Treaty shall continue to apply except where Article 13 of the Convention on simplified extradition procedure between the Member States of the European Union⁽¹⁾ provides otherwise or where the person concerned consents to be re-extradited to another Member State.

Article 13

Central authority and transmission of documents by facsimile

1. Each Member State shall designate a central authority or, where its constitutional system so requires, central authorities responsible for transmitting and receiving extradition requests and the necessary supporting documents, as well as any other official correspondence relating to extradition requests, unless otherwise provided for in this Convention.

2. When giving the notification referred to in Article 18 (2) each Member State shall indicate the authority or authorities which it has designated pursuant to paragraph 1 of this Article. It shall inform the depositary of any change concerning the designation.

3. The extradition request and the documents referred to in paragraph 1 may be sent by facsimile transmission. Each central authority shall be equipped with a facsimile machine for transmitting and receiving such documents and shall ensure that it is kept in proper working order.

4. In order to ensure the authenticity and confidentiality of the transmission, a cryptographic device fitted to the facsimile machine possessed by the central authority shall be in operation when the equipment is being used to apply this Article.

Member States shall consult each other on the practical arrangements for applying this Article.

⁽¹⁾ OJ No C 78, 30. 3. 1995, p. 1.

5. In order to guarantee the authenticity of extradition documents, the central authority of the requesting Member State shall state in its request that it certifies that the documents transmitted in support of that request correspond to the originals and shall describe the pagination. Where the requested Member State disputes that the documents correspond to the originals, its central authority shall be entitled to require the central authority of the requesting Member State to produce the original documents or a true copy thereof within a reasonable period through either diplomatic channels or any other mutually agreed channel.

Article 14

Supplementary information

When giving the notification referred to in Article 18 (2), or at any other time, any Member State may declare that, in its relations with other Member States which have made the same declaration, the judicial authorities or other competent authorities of those Member States may, where appropriate, make requests directly to its judicial authorities or other competent authorities responsible for criminal proceedings against the person whose extradition is requested for supplementary information in accordance with Article 13 of the European Convention on Extradition or Article 12 of the Benelux Treaty.

In making such a declaration, a Member State shall specify its judicial authorities or other competent authorities authorized to communicate and receive such supplementary information.

Article 15

Authentication

Any document or any copy of documents transmitted for the purposes of extradition shall be exempted from authentication or any other formality unless expressly required by the provisions of this Convention, the European Convention on Extradition or the Benelux Treaty. In the latter case, copies of documents shall be considered to be authenticated when they have been certified true copies by the judicial authorities that issued the original or by the central authority referred to in Article 13.

Article 16

Transit

In the case of transit, under the conditions laid down in Article 21 of the European Convention on Extradition and Article 21 of the Benelux Treaty, through the territory of one Member State to another Member State, the following provisions shall apply:

(a) any request for transit must contain sufficient information to enable the Member State of transit to assess the request and to take the constraint measures needed for execution of the transit *vis-à-vis* the extradited person.

To that end, the following information shall be sufficient:

- the identity of the person extradited,
- the existence of an arrest warrant or other document having the same legal effect or of an enforceable judgment,
- the nature and the legal description of the offence,
- a description of the circumstances in which the offence was committed, including the date and place;

(b) the request for transit and the information provided for in point (a) may be sent to the Member State of transit by any means leaving a written record. The Member State of transit shall make its decision known by the same method;

(c) in the case of transport by air without a scheduled stopover, if an unscheduled landing occurs, the requesting Member State shall provide the transit Member State concerned with the information provided for in point (a);

(d) subject to the provisions of this Convention, in particular Articles 3, 5 and 7, the provisions of Article 21 (1), (2), (5) and (6) of the European Convention on Extradition and Article 21 (1) of the Benelux Treaty shall continue to apply.

Article 17

Reservations

No reservations may be entered in respect of this Convention other than those for which it makes express provision.

Article 18

Entry into force

1. This Convention shall be subject to adoption by the Member States in accordance with their respective constitutional requirements.

2. Member States shall notify the Secretary-General of the Council of the European Union of the completion of

the constitutional procedures for the adoption of this Convention.

3. This Convention shall enter into force 90 days after the notification referred to in paragraph 2 by the State, Member of the European Union at the time of adoption by the Council of the Act drawing up this Convention, which is last to complete that formality.

4. Until this Convention enters into force, any Member State may, when giving the notification referred to in paragraph 2, or at any other time, declare that as far as it is concerned this Convention shall apply to its relations with Member States that have made the same declaration. Such declarations shall take effect 90 days after the date of deposit thereof.

5. This Convention shall apply only to requests submitted after the date on which it enters into force or is applied as between the requested Member State and the requesting Member State.

Article 19

Accession of new Member States

1. This Convention shall be open to accession by any State that becomes a member of the European Union.

2. The text of this Convention in the language of the acceding State, drawn up by the Council of the European Union, shall be authentic.

3. The instruments of accession shall be deposited with the depositary.

4. This Convention shall enter into force with respect to any State that accedes to it 90 days after the deposit of its instrument of accession or on the date of entry into force of this Convention if it has not already entered into force at the time of expiry of the said period 90 days.

5. Where this Convention is not yet in force at the time of the deposit of their instrument of accession, Article 18 (4) shall apply to acceding Member States.

Article 20

Depositary

1. The Secretary-General of the Council of the European Union shall act as depositary of this Convention.

2. The depositary shall publish in the *Official Journal of the European Communities* information on the progress of adoptions and accessions, declarations and reservations, and also any other notification concerning this Convention.

In witness whereof, the undersigned Plenipotentiaries have hereunto set their hands.

Done in a single original, in the Danish, Dutch, English, Finnish, French, German, Greek, Irish, Italian, Portuguese, Spanish and Swedish languages, each text being equally authentic, such original remaining deposited in the archives of the General Secretariat of the Council of the European Union. The Secretary-General shall transmit a certified copy to each of the Member States.

ANNEX

Joint Declaration on the right of asylum

The Member States declare that this Convention is without prejudice either to the right of asylum to the extent to which it is recognized by their respective constitutions or to the application by the Member States of the provisions of the Convention relating to the Status of Refugees of 28 July 1951, as supplemented by the Convention relating to the Status of Stateless Persons of 28 September 1954 and by the Protocol relating to the Status of Refugees of 31 January 1967.

Declaration by Denmark, Finland and Sweden concerning Article 7 of this Convention

Denmark, Finland and Sweden confirm that — as indicated during their negotiations on accession to the Schengen agreements — they will not invoke, in relation to other Member States which ensure equal treatment, their declarations under Article 6 (1) of the European Convention on Extradition as a ground for refusal of extradition of residents from non-Nordic States.

Declaration on the concept of 'nationals'

The Council takes note of the Member States' undertaking to apply the Council of Europe Convention of 21 March 1983 on the Transfer of Sentenced Persons in respect of the nationals of each Member State within the meaning of Article 3 (4) of the said Convention.

The Member States' undertaking mentioned in the first paragraph is without prejudice to the application of Article 7 (2) of this Convention.

Declaration by Greece re Article 5

Greece interprets Article 5 from the standpoint of paragraph 3 thereof. This interpretation ensures compliance with the conditions of the Greek constitution, which:

- expressly prohibits extradition of a foreigner pursued for activities in defence of freedom,
- and
- distinguishes between political and so-called mixed offences, for which the rules are not the same as for political offences.

Declaration by Portugal on extradition requested for an offence punishable by a life sentence or detention order

Having entered a reservation in respect of the *European Convention on Extradition of 1957* to the effect that it will not grant extradition of persons wanted for an offence punishable by a life sentence or detention order, Portugal states that where extradition is sought for an offence punishable by a life sentence or detention order, it will grant extradition, in compliance with the relevant provisions of the Constitution of the Portuguese Republic, as interpreted by its Constitutional Court, only if it regards as sufficient the assurances given by the requesting Member State that it will encourage, in accordance with its law and practice regarding the carrying out of sentences, the application of any measures of clemency to which the person whose extradition is requested might be entitled.

Portugal reaffirms the validity of undertakings entered into in existing international agreements to which it is party, in particular in Article 5 of the Convention on Portuguese accession to the Convention Applying the Schengen Agreement.

Council declaration on the follow up to the Convention

The Council declares:

- (a) that it considers that there should be a periodic review, on the basis of information supplied by the Member States, of:
- the implementation of this Convention,
 - the functioning of this Convention after its entry into force,
 - the possibility for Member States to amend the reservations entered in the framework of this Convention with a view to easing the conditions for extradition or withdrawing its reservations,
 - the general functioning of extradition procedures between the Member States;
- (b) that it will consider, one year after entry into force of this Convention, whether jurisdiction should be given to the Court of Justice of the European Communities.
-

TERRORISM

The Council noted a report on the internal and external threat which terrorism represents for the Member States of the Union.

It also formally adopted the La Gomera Declaration on terrorism, which is reproduced below:

La Gomera Declaration

"THE COUNCIL OF THE EUROPEAN UNION,

RECALLING the informal meeting of the Ministers for Justice and Home Affairs of the Member States, held in La Gomera on 14 October 1995,

NOTES that terrorism:

- constitutes a threat to democracy, to the free exercise of human rights and to economic and social development, from which no Member State of the European Union can be regarded as exempt;
- has stepped up its activity, more specifically as a result of fundamentalist action;
- is operating on a transnational scale, which cannot be dealt with effectively solely by means of isolated action and using each individual State's own resources;
- is developing strategies and using methods of international organized crime;

23.XI.95

- might take advantage of any differences in legal treatment in different States to try to gain impunity;

CONSIDERS that combating terrorism, one of the most serious forms of crime, has been established in the Treaty on European Union as a priority objective among the matters of common interest;

DECLARES that in order to prevent and combat terrorist action effectively, there is a need for thorough coordination between Member States by way of improving the mechanism of police and judicial cooperation, through:

- an increase in exchange of operational information about terrorist groups, to bring about a better knowledge of their methods of operating, in particular arms trafficking, financing and money laundering,
- improvement of coordination and cooperation between judicial authorities so as to eliminate any risks of impunity;
- the handing over to the judicial authorities with jurisdiction of those responsible for terrorist acts, to stand trial and serve any sentences imposed, by means of extradition, having regard to the provisions of international Treaties."

Annexes

Chapter 8

(Acts adopted under Title VI of the Treaty on European Union)

JOINT ACTION

of 22 April 1996

adopted by the Council on the basis of Article K.3 of the Treaty on European Union, concerning a framework for the exchange of liaison magistrates to improve judicial cooperation between the Member States of the European Union

(96/277/JHA)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to Article K.3 (2) (b) of the Treaty on European Union,

Having regard to the initiative of the Italian Republic,

Whereas the Member States consider that they have a common interest in adopting measures to improve judicial cooperation, in both criminal and civil matters;

Whereas, to that end, the exchange of magistrates or officials to liaise between the Member States which so wish constitutes a useful and desirable measure;

Whereas the exchange of liaison magistrates or officials could increase the speed and effectiveness of judicial cooperation and at the same time facilitate better mutual understanding between Member States' legal and judicial systems;

Whereas more effective judicial cooperation in criminal matters could also help in effectively combating all forms of transnational crime, particularly organized crime and terrorism as well as fraud affecting the financial interests of the Community;

Whereas this joint action does not affect existing rules of procedure for judicial cooperation or exchanges of information between the Member States and the Commission based on other instruments;

Taking a positive view of the initiatives already undertaken by a number of Member States in sending liaison magistrates or officials to or receiving them from authorities competent for judicial cooperation and current initiatives to establish an effective network of judicial contact points to combat international organized crime;

Having considered the need to define a clear and useful judicial framework for initiatives already under way

in order to increase their effectiveness and promote coordination,

HAS ADOPTED THIS JOINT ACTION;

Article 1

Exchange of liaison magistrates

1. This joint action establishes a framework for the posting or the exchange of magistrates or officials with special expertise in judicial cooperation procedures hereafter, referred to as 'liaison magistrates', as between Member States, on the basis of bilateral or multilateral arrangements.

2. The Member States agree that, the guidelines laid down in this joint action will serve as a reference when they decide to send liaison magistrates to another Member State or to exchange liaison magistrates.

3. The main aim of creating a framework for the exchange of liaison magistrates is to increase the speed and effectiveness of judicial cooperation and to promote the pooling of information on the legal and judicial systems of the Member States and to improve their operation.

Article 2

Functions of liaison magistrates

1. The tasks of liaison magistrates shall normally include any activity designed to encourage and accelerate all forms of judicial cooperation in criminal and, where appropriate, civil matters, in particular by establishing direct links with the competent departments and judicial authorities of the host State.

2. Under arrangements agreed between the home Member State and the host Member State, liaison magistrates' tasks may also include any activity connected with handling the exchange of information and statistics designed to promote mutual understanding of the legal systems and legal data bases of the States concerned and to further relations between the legal professions of each of those States.

Article 3

Exchange of information

Member States shall keep each other informed within the Council of initiatives already under way and those taken to implement this joint action. The Member States

concerned shall forward information on their exchanges of liaison magistrates to the General Secretariat of the Council annually.

Article 4

Final provision

This joint action shall be published in the Official Journal and shall enter into force on the date of its publication.

Done at Luxembourg, 22 April 1996.

For the Council

The President

S. AGNELLI

Resolution on the European Commission's Work Programme for the fight against fraud for 1996 (COM(96)0017 - C4-0117/96)

The European Parliament,

- having regard to the 1996 Work Programme for the fight against fraud (COM(96)0017 - C4-0117/96),
- having regard to the Commission's 1995 Annual Report on the fight against fraud (COM(96)0173),
- having regard to the report of the Committee on Budgetary Control and the opinion of the Committee on Legal Affairs and Citizens' Rights (A4-0257/96),

1. Adopts the following position:

- (a) an effective and credibly implemented campaign against fraud is a factor which contributes to acceptance of the European Union by its citizens and thereby has an effect which goes beyond the financial aspect;
- (b) in the narrower sense also, fighting fraud not only protects the financial interests of the Community, but also contributes directly to protecting the financial interests of all European tax-payers;
- (c) the measures to combat fraud, their successes and failures, are therefore being followed increasingly closely and critically by a wide public;
- (d) the Commission's Annual Report and its Work Programme form an important basis on which to judge the anti-fraud strategy;
- (e) it is therefore of the greatest importance that these documents should be readable, clearly structured and comprehensible, and that it should be possible to check the information in them. The European Parliament welcomes the Commission's efforts in this respect and calls on the Commission to continue along the same lines;
- (f) the Commission should endeavour to bring the publication dates of the Work Programme and the Annual Report closer together. With the present structure it is difficult to make a direct link between the measures announced in the Work Programme and an assessment of their success or failure;
- (g) the period covered by the Work Programme should no longer be that of the calendar year, but should be more closely linked to the publication of the Annual Report. The proposed Work Programme would be published jointly with the Annual Report, at a time such that Parliament would be able to deliver its opinion on both documents before the summer recess;
- (h) this would make it possible to incorporate in the Annual Report all the analytical and evaluative parts of the Work Programme, as well as pure statements of intent. The Work Programme could then take the form of a list of clearly defined points. This would enable it to be shorter, making it easier to assess the success of the measures;
- (i) measures intended to extend over a long period or to operate on a permanent basis should be indicated;
- (j) all points mentioned in the Work Programme must be taken up in the Annual Report, and their effectiveness assessed;

(k) the Annual Report should include the following:

- the previous Work Programme with a precise evaluation of the measures implemented,
- a clearly structured overview of the state of legislation in the European Union and the Member States. Political difficulties in transposition of legislation should be precisely and comprehensibly described and their consequences analysed,
- a report on the work of the task groups,
- an overview of developments in high-risk areas and a clear definition of what is regarded as a high-risk area and why,
- a report on the extent to which knowledge gained from experience in combating fraud has been incorporated into the Commission's legislative activity,
- a separate report and analysis of the consequences of fraud which are not simply financial in nature, such as distortion of competition, breakdowns in consumer protection, etc.,
- an annex containing, for example, important Council decisions or recommendations, basic Commission or Parliament documents, etc.;

(1) the European Parliament calls on the Commission to analyse in more depth whether, and to what extent, encouragements to fraud are already present in directives and regulations (in the high-risk areas) or are a result of their complexity or the difficulty of checking compliance with them. The Commission should consider in particular whether, in the high-risk areas, the instruments used (subsidies, refunds, etc.) adequately fulfil their real purpose or whether they could be replaced by other instruments which are more efficient and less open to fraud. The Commission should comment on these questions each year in the Annual Report;

2. Instructs its President to forward this resolution to the Commission and Council.

Resolution on the follow-up to the interparliamentary conference on combating fraud against the Community budget (23 and 24 April 1996): for concerted action by the Union and the Member States

The European Parliament,

- having regard to Rule 148 of its Rules of Procedure,
- having regard to the report of the Committee on Budgetary Control and the opinions of the Committee on Civil Liberties and Internal Affairs and the Committee on Legal Affairs and Citizens' Rights (A4-0263/96),
- A. recalling that the interparliamentary conference of 23 and 24 April 1996 on combating fraud against the Community budget was convened to establish the bases for necessary cooperation between national and Community authorities founded on:
 - the common interest of the Union and the Member States, which are also affected by the financial and political harm caused by such fraud,
 - decentralized allocation of responsibilities and competences between the two levels,
- B. noting that the conference identified important loopholes in the legislation intended, at the national and Community levels, to protect Union finances,
- C. considering that finding should be followed up by making specific proposals inspired by those principles and findings,
- D. whereas the Intergovernmental Conference should be entrusted with the problem of providing the Treaty with the means of protecting the Community's financial interests at an equivalent level in an effective, proportionate and dissuasive manner,
- E. whereas considerable progress has been achieved on legislation and administrative sanctions and controls, whereas, however, it is necessary to supplement the legislation on legal and judicial instruments for the protection of Community finances,
- F. regretting, however, that criminal-law protection against fraud has been relegated to the third pillar,
- G. considering that the fight against cross-border fraud and corruption should be conducted by multi-disciplinary bodies bound to one another by special links,
- H. recalling that cross-border cooperation between the Member States and with the Commission is the only effective method of combating fraud by large criminal organizations which profit from the globalization of markets and differences between the national legal orders,

Harmonizing responsibilities and competences

1. Calls on the participants in the IGC to create within the Treaty the instruments that are essential for effectively prosecuting fraud, e.g.:
 - (a) a legal basis permitting the adoption of anti-fraud legislation under a codecision procedure;
 - (b) a duty to safeguard Community finances in the various Member States in an equivalent manner;

- (c) the communitization of certain fields which are part of Title VI of the TEU (Justice and Home Affairs), such as those referred to in Articles K.1, K.7, K.8 and K.9 in so far as they concern protection of the Community's financial interests;
- (d) an explicit reference in the Treaty on European Union to the 'fight against corruption' as a matter of common interest;

Supplementing legislation

- 2. Calls on the Commission to re-examine sectoral legal instruments with a view to harmonizing them with Regulation No 2988/95 on administrative sanctions and controls, in particular as regards exclusion from or withdrawal of the benefit in cases of irregularity;
- 3. Recommends the Member States, the Commission and the Council to establish more preventive rules to combat fraud and corruption, with the aim of increasing the transparency (and thus facilitating the monitoring) of revenue and expenditure of relevance to the budget and the associated decision-making processes;
- 4. Calls on the Council to press ahead speedily with its deliberations on the additional Protocol to the Convention on the Protection of the European Communities' Financial Interests (concerning the liability of legal persons) and, in so doing, to take due account of the European Parliament's opinions, which it has yet to deliver;
- 5. Recalls that, if it proved impossible to obtain unanimous ratification of the convention on protecting the financial interests of the Community and any protocols which might follow it, it would get back its freedom of action and could ask the Commission to propose a Community initiative;
- 6. Recommends to the Member States and the Commission that, in partnership, they make more homogenous the following legal and judicial instruments, which could influence the protection of Community finances in the judicial proceedings and recovery stage:
 - . out-of-court settlements: this practice would be allowed exceptionally, never for amounts due or for intentional irregularities, and always on the basis of prior authorization of the Community authority, which would have to be systematically informed;
 - . bringing a private action for damages in parallel with criminal prosecution, which, in States where this action is not available, would have to be replaced by equivalent protection mechanisms;
 - . collection and recovery, which should be entrusted to the bodies primarily competent, acting according to harmonized procedures (compulsory communication to the Commission; Treasury debt and Community debt to enjoy equivalent privileges; uniform limitation periods), and monitored by a centralized Community service.

Consolidating the anti-fraud organization

- 7. Invites:
 - (a) the Member States to establish these multi-disciplinary bodies and to provide them with specialized staff;
 - (b) the Commission and the Member States to cooperate in implementing a vast training programme for investigators and in defining a legal instrument providing national investigators with comparable powers of investigation;

- (c) the Commission to define more closely the role of the Unit for the Coordination of Fraud Prevention (UCLAF), which should be based on four pillars:
- systematic information about all fraud;
 - coordination of national investigations;
 - investigations initiated by UCLAF in cases of fraud;
 - recovery/collection initiatives in cases of serious national shortfalls or if Community action is taken to set an example;

Creating bases for cooperation

8. Requests the Commission:
- (a) to present proposals for the legislation it considers necessary to reinforce administrative cooperation;
 - (b) to propose, in the context of joint consideration with the Member States:
 - a legal instrument governing cooperation on the pre-judicial suppression of fraud;
 - an initiative to establish genuine judicial cooperation by eliminating existing legal barriers and giving a single country power to prosecute, and to regulate letters rogatory and their probative value.
9. Recommends the Council to define in a separate (horizontal) act general obligations on the Member States with the aim of removing existing substantive obstacles (such as the requirement of liability to punishment in both countries) to extradition and legal assistance in criminal cases and of facilitating and accelerating the procedures governing judicial cooperation among the Member States in criminal cases;
10. Considers that effective transnational cooperation must be based on the centralization of information and the coordination of acts by a Community body, such as UCLAF; requests the Commission, therefore, to provide for the UCLAF to play this role in the initiative designed to regulate administrative, police and judicial cooperation;
11. Considers that the application of letters rogatory would be facilitated by conferring a specific competence on a Community body, which would act at the request of the Member State competent for prosecution and in application of that State's law and calls on the Commission and the Member States to consider this subsequent development;
- o
o o
12. Calls on the Commission to study the question of bringing criminal proceedings in cases of offences harming the EU's financial interests, in particular as a result of corruption of officials;
13. Instructs its President to forward this resolution to the Commission, the Council and to all participants in the interparliamentary conference and to the speakers of the various houses of parliament of the Member States.

17(c) B4-1009/96

Resolution on the Convention for the protection of the European Communities' financial interestsThe European Parliament,

- having regard to the Council Act of 26 July 1995 drawing up the Convention for the protection of the European Communities' financial interests¹,
 - having regard to its opinion of 15 March 1995 on the proposal for a Council of the European Union Act establishing a Convention for the protection of the European Communities' financial interests (COM(94)0214 - C4-0156/94 - 94/0146(CNS))²,
- A. whereas, at the present time, no Member State has ratified the Convention,
 - B. whereas progress in the national ratification procedures does not point to their completion within a reasonable time-scale,
 - C. whereas the Convention's entry into force depends on first finding a solution to the problem concerning the Court of Justice's power to give a preliminary ruling and on ratification by all 15 Member States,
 - D. whereas due account has not, so far, been taken of Parliament's views regarding the first additional protocol to the Convention for the protection of the European Communities' financial interests,
 - E. whereas the parallel establishment of separate legal instruments, whose content is sometimes identical (first additional protocol to the Convention for the protection of the European Communities' financial interests, on the one hand, and the Convention on the fight against corruption, on the other hand) creates ambiguity, leading to uncertainty, which will not facilitate the efficient detection of fraud or lasting measures to combat it,
1. Deplores the unfortunate decision by the Commission and the Council to have recourse, for the protection of the European Communities' financial interests, to the legal framework of the third pillar of the EU Treaty, whose weakness will compromise the instrument's effective entry into force within a reasonable period of time;
 2. Points out that, in the absence of equivalent protection of Community finances in all the Member States, organized crime will be able to exploit the present differences between the national legal systems, to the detriment of the budget and Community tax payers;
 3. Considers, therefore, that protection under criminal law of the Community's finances is an urgent objective which cannot be delayed any longer;
 4. Calls, therefore, on the Council and the national constitutional bodies to do everything possible to ensure the speedy ratification of the Convention;
 5. Calls on the Commission to initiate studies immediately on a Community instrument providing protection equivalent to that under the Convention if the latter should continue to be inoperable until 1997;
 6. Appeals to the parliaments of the Member States to monitor closely the measures the national bodies and Community institutions will set in train in the near future to find a rapid solution to this problem;

¹ OJ C 316, 27.11.1995, p. 48.

² OJ C 89, 10.4.1995, p. 82.

7. Invites the Council Presidency to fulfil its obligations under Article K.6(2) of the TEU and to ensure that the European Parliament's views concerning the first additional protocol to the Convention for the protection of the European Communities' financial interests are duly taken into consideration;
8. Proposes that this first additional protocol and the Convention on the fight against corruption be combined in a single legal instrument;
9. Instructs its President to forward this resolution to the Commission, the Council and the parliaments of the Member States.

COUNCIL ACT

of 26 July 1995

drawing up the Convention on the protection of the European Communities' financial interests

(95/C 316/03)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article K.3 (2) (c) thereof,

Whereas, for the purposes of achieving the objectives of the Union, the Member States regard the combating of fraud affecting the European Communities' financial interests as a matter of common interest coming under the cooperating provided for in Title VI of the Treaty;

Whereas, in order to combat such fraud with the utmost vigour, it is necessary to draw up a first agreement, to be supplemented shortly afterwards by another legal instrument, in such a way as to improve the effectiveness of protection under criminal law of the European Communities' financial interests;

HAVING DECIDED that the Convention, the text of which is given in the Annex and which is signed today by the Representatives of the Governments of the Member States of the Union, is hereby drawn up;

RECOMMENDS that it be adopted by the Member States in accordance with their respective constitutional requirements.

Done at Brussels, 26 July 1995

For the Council

The President

J. A. BELLOCH JULBE

ANNEX

CONVENTION

Drawn up on the basis of Article K.3 of the Treaty on European Union, on the protection of the European Communities' financial interests

THE HIGH CONTRACTING PARTIES to this Convention, Member States of the European Union,

REFERRING to the Act of the Council of the European Union of 26 July 1995;

DESIRING to ensure that their criminal laws contribute effectively to the protection of the financial interests of the European Communities;

NOTING that fraud affecting Community revenue and expenditure in many cases is not confined to a single country and is often committed by organized criminal networks;

CONVINCED that protection of the European Communities' financial interests calls for the criminal prosecution of fraudulent conduct injuring those interests and requires, for that purpose, the adoption of a common definition;

CONVINCED of the need to make such conduct punishable with effective, proportionate and dissuasive criminal penalties, without prejudice to the possibility of applying other penalties in appropriate cases, and of the need, at least in serious cases, to make such conduct punishable with deprivation of liberty which can give rise to extradition;

RECOGNIZING that businesses play an important role in the areas financed by the European Communities and that those with decision-making powers in business should not escape criminal responsibility in appropriate circumstances;

DETERMINED to combat together fraud affecting the European Communities' financial interests by undertaking obligations concerning jurisdiction, extradition, and mutual cooperation,

HAVE AGREED ON THE FOLLOWING PROVISIONS:

Article 1

General provisions

1. For the purposes of this Convention, fraud affecting the European Communities' financial interests shall consist of:

(a) in respect of expenditure, any intentional act or omission relating to:

- the use or presentation of false, incorrect or incomplete statements or documents, which has as its effect the misappropriation or wrongful retention of funds from the general budget of the European Communities or budgets managed by, or on behalf of, the European Communities,

— non-disclosure of information in violation of a specific obligation, with the same effect,

— the misapplication of such funds for purposes other than those for which they were originally granted;

(b) in respect of revenue, any intentional act or omission relating to:

- the use or presentation of false, incorrect or incomplete statements or documents, which has as its effect the illegal diminution of the resources of the general budget of the European Communities or budgets managed by, or on behalf of, the European Communities,

- non-disclosure of information in violation of a specific obligation, with the same effect,
- misapplication of a legally obtained benefit, with the same effect.

2. Subject to Article 2 (2), each Member State shall take the necessary and appropriate measures to transpose paragraph 1 into their national criminal law in such a way that the conduct referred to therein constitutes criminal offences.

3. Subject to Article 2 (2), each Member State shall also take the necessary measures to ensure that the intentional preparation or supply of false, incorrect or incomplete statements or documents having the effect described in paragraph 1 constitutes a criminal offence if it is not already punishable as a principal offence or as participation in, instigation of, or attempt to commit, fraud as defined in paragraph 1.

4. The intentional nature of an act or omission as referred to in paragraphs 1 and 3 may be inferred from objective, factual circumstances.

Article 2

Penalties

1. Each Member State shall take the necessary measures to ensure that the conduct referred to in Article 1, and participating in, instigating, or attempting the conduct referred to in Article 1 (1), are punishable by effective, proportionate and dissuasive criminal penalties, including, at least in cases of serious fraud, penalties involving deprivation of liberty which can give rise to extradition, it being understood that serious fraud shall be considered to be fraud involving a minimum amount to be set in each Member State. This minimum amount may not be set at a sum exceeding ECU 50 000.

2. However in cases of minor fraud involving a total amount of less than ECU 4 000 and not involving particularly serious circumstances under its laws, a Member State may provide for penalties of a different type from those laid down in paragraph 1.

3. The Council of the European Union, acting unanimously, may alter the amount referred to in paragraph 2.

Article 3

Criminal liability of heads of businesses

Each Member State shall take the necessary measures to allow heads of businesses or any persons having power to take decisions or exercise control within a business to be declared criminally liable in accordance with the

principles defined by its national law in cases of fraud affecting the European Community's financial interests, as referred to in Article 1, by a person under their authority acting on behalf of the business.

Article 4

Jurisdiction

1. Each Member State shall take the necessary measures to establish its jurisdiction over the offences it has established in accordance with Article 1 and 2 (1) when:

- fraud, participation in fraud or attempted fraud affecting the European Communities' financial interests is committed in whole or in part within its territory, including fraud for which the benefit was obtained in that territory,
- a person within its territory knowingly assists or induces the commission of such fraud within the territory of any other State,
- the offender is a national of the Member State concerned, provided that the law of that Member State may require the conduct to be punishable also in the country where it occurred.

2. Each Member State may declare, when giving the notification referred to in Article 11 (2), that it will not apply the rule laid down in the third indent of paragraph 1 of this Article.

Article 5

Extradition and prosecution

1. Any Member State which, under its law, does not extradite its own nationals shall take the necessary measures to establish its jurisdiction over the offences it has established in accordance with Articles 1 and 2 (1), when committed by its own nationals outside its territory.

2. Each Member State shall, when one of its nationals is alleged to have committed in another Member State a criminal offence involving the conduct described in Articles 1 and 2 (1), and it does not extradite that person to that other Member State solely on the ground of his or her nationality, submit the case to its competent authorities for the purpose of prosecution if appropriate. In order to enable prosecution to take place, the files, information and exhibits relating to the offence shall be transmitted in accordance with the procedures laid down in Article 6 of the European Convention on Extradition. The requesting Member State shall be informed of the prosecution initiated and of its outcome.

3. A Member State may not refuse extradition in the event of fraud affecting the European Communities'

financial interests for the sole reason that it concerns a tax or customs duty offence.

4. For the purposes of this Article, a Member State's own nationals shall be construed in accordance with any declaration made by it under Article 6 (1) (b) of the European Convention on Extradition and with paragraph 1 (c) of the Article.

Article 6

Cooperation

1. If a fraud as defined in Article 1 constitutes a criminal offence and concerns at least two Member States, those States shall cooperate effectively in the investigation, the prosecution and in carrying out the punishment imposed by means, for example, of mutual legal assistance, extradition, transfer of proceedings or enforcement of sentences passed in another Member State.

2. Where more than one Member State has jurisdiction and has the possibility of viable prosecution of an offence based on the same facts, the Member States involved shall cooperate in deciding which shall prosecute the offender or offenders with a view to centralizing the prosecution in a single Member State where possible.

Article 7

Ne bis in idem

1. Member States shall apply in their national criminal laws the 'ne bis in idem' rule, under which a person whose trial has been finally disposed of in a Member State may not be prosecuted in another Member State in respect of the same facts, provided that if a penalty was imposed, it has been enforced, is actually in the process of being enforced or can no longer be enforced under the laws of the sentencing State.

2. A Member State may, when giving the notification referred to in Article 11 (2), declare that it shall not be bound by paragraph 1 of this Article in one or more of the following cases:

- (a) if the facts which were the subject of the judgement rendered abroad took place on its own territory either in whole or in part; in the latter case this exception shall not apply if those facts took place partly on the territory of the Member State where the judgement was rendered;
- (b) if the facts which were the subject of the judgment rendered abroad constitute an offence directed against the security or other equally essential interests of that Member State;

(c) if the facts which were the subject of the judgement rendered abroad were committed by an official of the Member State contrary to the duties of his office.

3. The exceptions which may be the subject of a declaration under paragraph 2 shall not apply if the Member State concerned in respect of the same facts requested the other Member State to bring the prosecution or granted extradition of the person concerned.

4. Relevant bilateral or multilateral agreements concluded between Member States and relevant declarations shall remain unaffected by this Article.

Article 8

Court of Justice

1. Any dispute between Member States on the interpretation or application of this Convention must in an initial stage be examined by the Council in accordance with the procedure set out in Title VI of the Treaty on European Union with a view to reaching a solution.

If no solution is found within six months, the matter may be referred to the Court of Justice of the European Communities by a party to the dispute.

2. Any dispute between one or more Member States and the Commission of the European Communities concerning the application of Article 1 or 10 of this Convention which it has proved impossible to settle through negotiation may be submitted to the Court of Justice.

Article 9

Internal provisions

No provision in this Convention shall prevent Member States from adopting internal legal provisions which go beyond the obligations deriving from this Convention.

Article 10

Transmission

1. Member States shall transmit to the Commission of the European Communities the text of the provisions transposing into their domestic law the obligations imposed on them under the provisions of this Convention.

2. For the purposes of implementing this Convention, the High Contracting Parties shall determine, within the Council of the European Union, the information to be communicated or exchanged between the Member States or between the Member States and the Commission, and also the arrangements for doing so.

Article 11

Entry into force

1. This Convention shall be subject to adoption by the Member States in accordance with their respective constitutional requirements.

2. Member States shall notify the Secretary-General of the Council of the European Union of the completion of their constitutional requirements for adopting this Convention.

3. This Convention shall enter into force 90 days after the notification, referred to in paragraph 2, by the last Member State to fulfil that formality.

Article 12

Accession

1. This Convention shall be open to accession by any State that becomes a member of the European Union.

2. The text of this Convention in the language of the acceding State, drawn up by the Council of the European Union, shall be authentic.

3. Instruments of accession shall be deposited with the depositary.

4. This Convention shall enter into force with respect to any State that accedes to it 90 days after the deposit of its instrument of accession or on the date of entry into force of the Convention if it has not already entered into force at the time of expiry of the said period 90 days.

Article 13

Depositary

1. The Secretary-General of the Council of the European Union shall act as depositary of this Convention.

2. The depositary shall publish in the *Official Journal of the European Communities* information on the progress of adoptions and accessions, declarations and reservations, and also any other notification concerning this Convention.

Fait à Bruxelles, le vingt-six juillet mil neuf cent quatre-vingt-quinze, en un exemplaire unique, en langues allemande, anglaise, danoise, espagnole, finnoise, française, grecque, irlandaise, italienne, néerlandaise, portugaise et suédoise, tous ces textes faisant également foi, exemplaire qui est déposé dans les archives du Secrétariat général du Conseil de l'Union européenne.

Arna dhéanamh sa Bhrúiséal, an séú lá is fiche de Iúil sa bhliain míle naoi gcéad nócha a cúig, i scríbhinn bhunaidh amháin sa Bhéarla, sa Danmharcis, san Fhionlainnis, sa Fhraincis, sa Ghaeilge, sa Ghearmáinis, sa Ghréigis, san Iodáilis, san Oilainnis, sa Spáinnis agus sa tSualainnis agus comhúdarás ag na téacsanna i ngach ceann de na teangacha sin: déantar an scríbhinn bhunaidh sin a thaisceadh i geartlann Ardúnaíocht Chomhairle an Aontais Eorpaigh.

Fatto a Bruxelles, addì ventisei luglio millenovecentonovantacinque, in unico esemplare in lingua danese, finlandese, francese, greca, inglese, irlandese, italiana, olandese, portoghese, spagnola, svedese e tedesca, i testi di ciascuna di queste lingue facenti ugualmente fede, esemplare depositato negli archivi del segretariato generale dell'Unione europea.

Gedaan te Brussel, de zeventwintigste juli negentienhonderd vijftienentig, in één exemplaar, in de Deense, de Duitse, de Engelse, de Finse, de Franse, de Griekse, de Ierse, de Italiaanse, de Nederlandse, de Portugese, de Spaanse en de Zweedse taal, zijnde alle teksten gelijkelijk authentiek, dat wordt neergelegd in het archief van het Secretariaat-generaal van de Raad van de Europese Unie.

Feito em Bruxelas, em vinte e seis de Julho de mil novecentos e noventa e cinco, em exemplar único, nas línguas alemã, dinamarquesa, espanhola, finlandesa, francesa, grega, inglesa, irlandesa, italiana, neerlandesa, portuguesa e sueca, fazendo igualmente fé todos os textos, depositado nos arquivos do Secretariado-Geral do Conselho da União Europeia.

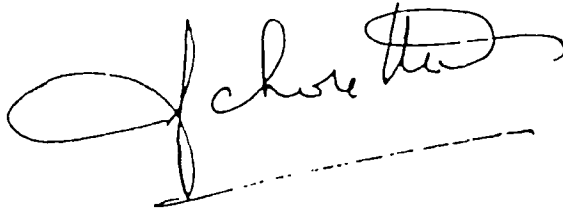
Tehty Brysselissä kahdentenkymmentenakuudentena päivänä heinäkuuta vuonna tuhatyhdeksänsataayhdeksänkymmentäviisi yhtenä ainoana kappaleena englannin, espanjan, hollannin, iirin, italian, kreikan, portugalin, ranskan, ruotsin, saksan, suomen ja tanskan kielellä kaikkien näiden tekstien ollessa yhtä todistusvoimaiset, ja se talletetaan Euroopan unionin neuvoston pääsihteeristön arkistoon.

Urfärdad i Bryssel den tjugosjätte juli nittonhundrafem i ett enda exemplar, på danska, engelska, finska, franska, grekiska, irländska, italienska, nederländska, portugisiska, spanska, svenska och tyska, varvid alla texter är lika giltiga, och deponerad i arkiven vid generalsekretariatet för Europeiska unionens råd.

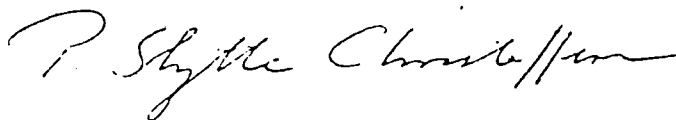
Pour le gouvernement du royaume de Belgique

Voor de Regering van het Koninkrijk België

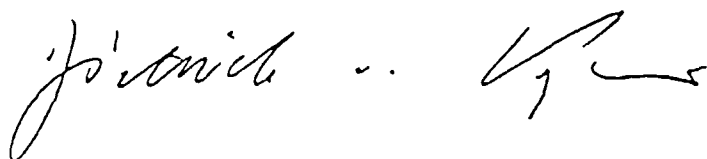
Für die Regierung des Königreichs Belgien



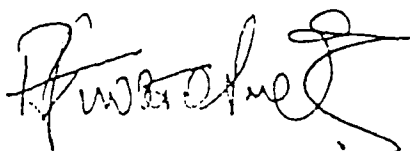
For regeringen for Kongeriget Danmark



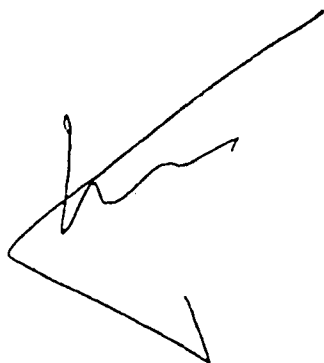
Für die Regierung der Bundesrepublik Deutschland



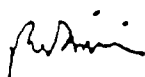
Για την κυβέρνηση της Ελληνικής Δημοκρατίας



Por el Gobierno del Reino de España



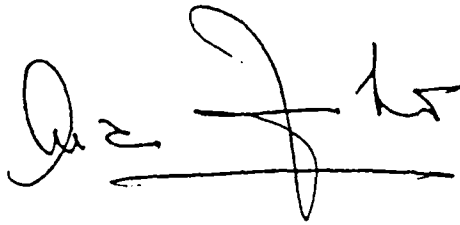
Pour le gouvernement de la République française



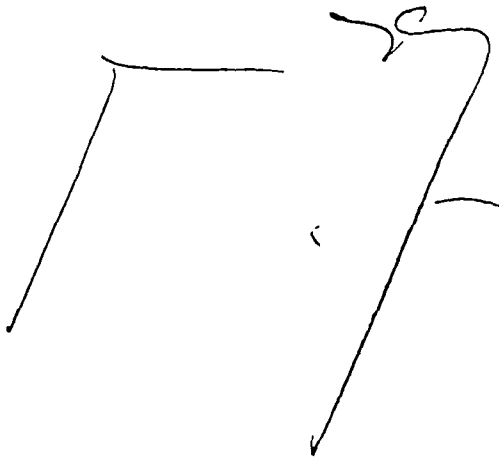
Thar ceann Rialtas na hÉireann
For the Government of Ireland



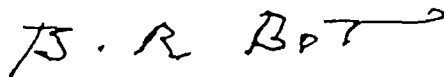
Per il governo della Repubblica italiana

A handwritten signature in black ink, appearing to be 'D. F. L.' with a horizontal line underneath.

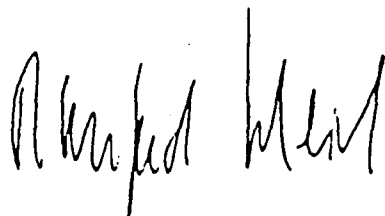
Pour le gouvernement du grand-duché de Luxembourg

A stylized handwritten signature in black ink, consisting of several sharp, angular strokes.

Voor de Regering van het Koninkrijk der Nederlanden

A handwritten signature in black ink, appearing to be 'B. R. Bot'.

Für die Regierung der Republik Österreich

A handwritten signature in black ink, appearing to be 'Karl Schmid'.

27. 11. 95

EN

Official Journal of the European Communities

No C 316/57

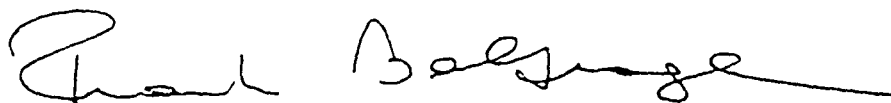
Pelo Governo da República Portuguesa



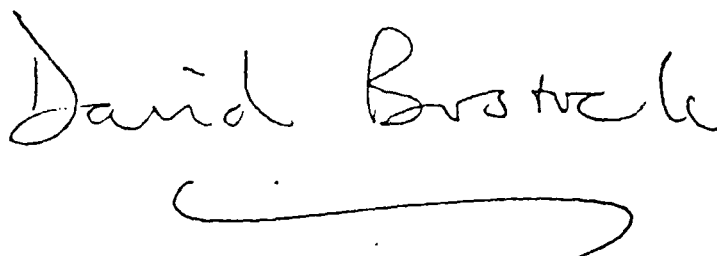
Suomen hallituksen puolesta



På svenska regeringens vägnar



For the Government of the United Kingdom of Great Britain and Northern Ireland



I

(Acts whose publication is obligatory)

COUNCIL REGULATION (EC, EURATOM) No 2988/95

of 18 December 1995

on the protection of the European Communities financial interests

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 235 thereof,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Article 203 thereof,

Having regard to the proposal from the Commission⁽¹⁾,

Having regard to the opinion of the European Parliament⁽²⁾,

Whereas the general budget of the European Communities is financed by own resources and administered by the Commission within the limit of the appropriations authorized and in accordance with the principle of sound financial management; whereas the Commission works in close cooperation with the Member States to that end;

Whereas more than half of Community expenditure is paid to beneficiaries through the intermediary of the Member States;

Whereas detailed rules governing this decentralized administration and the monitoring of their use are the subject of differing detailed provisions according to the Community policies concerned; whereas acts detrimental to the Communities' financial interests must, however, be countered in all areas;

Whereas the effectiveness of the combating of fraud against the Communities' financial interests calls for a common set of legal rules to be enacted for all areas covered by Community policies;

Whereas irregular conduct, and the administrative measures and penalties relating thereto, are provided for in sectoral rules in accordance with this Regulation;

Whereas the aforementioned conduct includes fraudulent actions as defined in the Convention on the protection of the European Communities' financial interests;

Whereas Community administrative penalties must provide adequate protection for the said interests; whereas it is necessary to define general rules applicable to these penalties;

Whereas Community law has established Community administrative penalties in the framework of the common agricultural policy; whereas such penalties must be established in other fields as well;

Whereas Community measures and penalties laid down in pursuance of the objectives of the common agricultural policy form an integral part of the aid systems; whereas they pursue their own ends which do not affect the assessment of the conduct of the economic operators concerned by the competent authorities of the Member States from the point of view of criminal law; whereas their effectiveness must be ensured by the immediate effect of Community rules and by applying in full Community measures as a whole, where the adoption of preventive measures has not made it possible to achieve that objective;

Whereas not only under the general principle of equity and the principle of proportionality but also in the light of the principle of *ne bis in idem*, appropriate provisions must be adopted while respecting the *acquis communautaire* and the provisions laid down in specific Community rules existing at the time of entry into force of this Regulation, to prevent any overlap of Community financial penalties and national criminal penalties imposed on the same persons for the same reasons;

(1) OJ No C 216, L. 8, 1994, p. 11.

(2) OJ No C 89, 10. 4. 1995, p. 83 and opinion delivered on 30 November 1995 (not yet published in the Official Journal).

Whereas, for the purposes of applying this Regulation, criminal proceedings may be regarded as having been completed where the competent national authority and the person concerned come to an arrangement;

Whereas this Regulation will apply without prejudice to the application of the Member States' criminal law;

Whereas Community law imposes on the Commission and the Member States an obligation to check that Community budget resources are used for their intended purpose; whereas there is a need for common rules to supplement existing provisions;

Whereas the Treaties make no provision for the specific powers necessary for the adoption of substantive law of horizontal scope on checks, measures and penalties with a view to ensuring the protection of the Communities' financial interests; whereas recourse should therefore be had to Article 235 of the EC Treaty and to Article 203 of the EAEC Treaty;

Whereas additional general provisions relating to checks and inspections on the spot will be adopted at a later stage,

HAS ADOPTED THIS REGULATION:

TITLE I

General principles

Article 1

1. For the purposes of protecting the European Communities' financial interests, general rules are hereby adopted relating to homogenous checks and to administrative measures and penalties concerning irregularities with regard to Community law.

2. 'Irregularity' shall mean any infringement of a provision of Community law resulting from an act or omission by an economic operator, which has, or would have, the effect of prejudicing the general budget of the Communities or budgets managed by them, either by reducing or losing revenue accruing from own resources collected directly on behalf of the Communities, or by an unjustified item of expenditure.

Article 2

1. Administrative checks, measures and penalties shall be introduced in so far as they are necessary to ensure the proper application of Community law. They shall be effective, proportionate and dissuasive so that they provide

adequate protection for the Communities' financial interests.

2. No administrative penalty may be imposed unless a Community act prior to the irregularity has made provision for it. In the event of a subsequent amendment of the provisions which impose administrative penalties and are contained in Community rules, the less severe provisions shall apply retroactively.

3. Community law shall determine the nature and scope of the administrative measures and penalties necessary for the correct application of the rules in question, having regard to the nature and seriousness of the irregularity, the advantage granted or received and the degree of responsibility.

4. Subject to the Community law applicable, the procedures for the application of Community checks, measures and penalties shall be governed by the laws of the Member States.

Article 3

1. The limitation period for proceedings shall be four years as from the time when the irregularity referred to in Article 1 (1) was committed. However, the sectoral rules may make provision for a shorter period which may not be less than three years.

In the case of continuous or repeated irregularities, the limitation period shall run from the day on which the irregularity ceases. In the case of multiannual programmes, the limitation period shall in any case run until the programme is definitively terminated.

The limitation period shall be interrupted by any act of the competent authority notified to the person in question, relating to investigation or legal proceedings concerning the irregularity. The limitation period shall start again following each interrupting act.

However, limitation shall become effective at the latest on the day on which a period equal to twice the limitation period expires without the competent authority having imposed a penalty, except where the administrative procedure has been suspended in accordance with Article 6 (1).

2. The period for implementing the decision establishing the administrative penalty shall be three years. That period shall run from the day on which the decision becomes final.

Instances of interruption and suspension shall be governed by the relevant provisions of national law.

3. Member States shall retain the possibility of applying a period which is longer than that provided for in paragraphs 1 and 2 respectively.

TITLE II

Administrative measures and penalties

Article 4

1. As a general rule, any irregularity shall involve withdrawal of the wrongly obtained advantage:

- by an obligation to pay or repay the amounts due or wrongly received,
- by the total or partial loss of the security provided in support of the request for an advantage granted or at the time of the receipt of an advance.

2. Application of the measures referred to in paragraph 1 shall be limited to the withdrawal of the advantage obtained plus, where so provided for, interest which may be determined on a flat-rate basis.

3. Acts which are established to have as their purpose the obtaining of an advantage contrary to the objectives of the Community law applicable in the case by artificially creating the conditions required for obtaining that advantage shall result, as the case shall be, either in failure to obtain the advantage or in its withdrawal.

4. The measures provided for in this Article shall not be regarded as penalties.

Article 5

1. Intentional irregularities or those caused by negligence may lead to the following administrative penalties:

- (a) payment of an administrative fine;
- (b) payment of an amount greater than the amounts wrongly received or evaded, plus interest where appropriate, this additional sum shall be determined in accordance with a percentage to be set in the specific rules, and may not exceed the level strictly necessary to constitute a deterrent;
- (c) total or partial removal of an advantage granted by Community rules, even if the operator wrongly benefited from only a part of that advantage;
- (d) exclusion from, or withdrawal of, the advantage for a period subsequent to that of the irregularity;
- (e) temporary withdrawal of the approval or recognition necessary for participation in a Community aid scheme;
- (f) the loss of a security or deposit provided for the purpose of complying with the conditions laid down by rules or the replenishment of the amount of a security wrongly released;

(g) other penalties of a purely economic type, equivalent in nature and scope, provided for in the sectoral rules adopted by the Council in the light of the specific requirements of the sectors concerned and in compliance with the implementing powers conferred on the Commission by the Council.

2. Without prejudice to the provisions laid down in the sectoral rules existing at the time of entry into force of this Regulation, other irregularities may give rise only to those penalties not equivalent to a criminal penalty that are provided for in paragraph 1, provided that such penalties are essential to ensure correct application of the rules.

Article 6

1. Without prejudice to the Community administrative measures and penalties adopted on the basis of the sectoral rules existing at the time of entry into force of this Regulation, the imposition of financial penalties such as administrative fines may be suspended by decision of the competent authority if criminal proceedings have been initiated against the person concerned in connection with the same facts. Suspension of the administrative proceedings shall suspend the period of limitation provided for in Article 3.

2. If the criminal proceedings are not continued, the suspended administrative proceedings shall be resumed.

3. When the criminal proceedings are concluded, the suspended administrative proceedings shall be resumed, unless that is precluded by general legal principles.

4. Where the administrative procedure is resumed, the administrative authority shall ensure that a penalty at least equivalent to that prescribed by Community rules is imposed, which may take into account any penalty imposed by the judicial authority on the same person in respect of the same facts.

5. Paragraphs 1 to 4 shall not apply to financial penalties which form an integral part of financial support systems and may be applied independently of any criminal penalties, if and in so far as they are not equivalent to such penalties.

Article 7

Community administrative measures and penalties may be applied to the economic operators referred to in Article 1, namely the natural or legal persons and the other entities on which national law confers legal capacity who have committed the irregularity and to those who are under a duty to take responsibility for the irregularity or to ensure that it is not committed.

TITLE III

Checks

Article 8

1. In accordance with their national laws, regulations and administrative provisions, the Member States shall take the measures necessary to ensure the regularity and reality of transactions involving the Communities' financial interests.

2. Measures providing for checks shall be appropriate to the specific nature of each sector and in proportion to the objectives pursued. They shall take account of existing administrative practice and structures in the Member States and shall be determined so as not to entail excessive economic constraints or administrative costs.

The nature and frequency of the checks and inspections on the spot to be carried out by the Member States and the procedure for performing them shall be determined as necessary by sectoral rules in such a way as to ensure uniform and effective application of the relevant rules and in particular to prevent and detect irregularities.

3. The sectoral rules shall include the provisions necessary to ensure equivalent checks through the approximation of procedures and checking methods.

Article 9

1. Without prejudice to the checks carried out by the Member States in accordance with their national laws,

regulations and administrative provisions and without prejudice to the checks carried out by the Community institutions in accordance with the EC Treaty, and in particular Article 188c thereof, the Commission shall, on its responsibility, have checks carried out on:

- (a) the conformity of administrative practices with Community rules;
- (b) the existence of the necessary substantiating documents and their concordance with the Communities' revenue and expenditure as referred to in Article 1;
- (c) the circumstances in which such financial transactions are carried out and checked.

2. In addition, it may carry out checks and inspections on the spot under the conditions laid down in the sectoral rules.

Before carrying out such checks and inspections, in accordance with the rules in force, the Commission shall inform the Member State concerned accordingly in order to obtain any assistance necessary.

Article 10

Additional general provisions relating to checks and inspections on the spot shall be adopted later in accordance with the procedures laid down in Article 235 of the EC Treaty and Article 203 of the EAEC Treaty.

Article 11

This Regulation shall enter into force on the third day following its publication in the *Official Journal of the European Communities*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 18 December 1995.

For the Council

The President

J. BORRELL FONTELLES

Draft second Protocol drawn up on the basis of Article K.3 of the Treaty on European Union, to supplement the Convention on the Protection of the European Communities' financial interests (7752/96 - C4-0137/96 - 95/0360(CNS))

The draft was approved with the following amendments:

Council draft

Amendments by Parliament

(Amendment 1)

Title

Second Protocol drawn up on the basis of Article K.3 of the Treaty on European Union, to supplement the Convention on the protection of the European Communities' financial interests

Second Protocol drawn up on the basis of Article K.3 of the Treaty on European Union, to supplement the Convention on the protection of the European Communities' financial interests, concerning the liability of legal persons and money laundering

(Amendment 2)

Sole recital (new)

Whereas a separate instrument will determine the arrangements for assistance and judicial cooperation and also priority jurisdiction and the coordination provided by the Commission in cases of transnational fraud against the Union budget;

(Amendment 4)

Article 1(d)

(d) 'legal person' shall mean any entity having such status under the applicable national law, except for States or other public bodies in the exercise of State authority and for public international organizations.

(d) 'legal person' shall mean any entity having such status under the applicable national law, except for States or other public bodies in the exercise of State authority and for public international organizations, and any economically active enterprise in which independent rights and obligations are vested.

Member States shall ensure that, in accordance with their national law, the liabilities laid down in this second protocol are applied to those units of activity (with separate assets) which operate for legal purposes with apparent or de facto independence of their owners.

(Amendment 5)

TITLE II, heading

Legal persons

Liability of legal persons

(Amendment 6)
Article 2(1)

1. Each Member State shall take the necessary measures to ensure that legal persons can be held liable for fraud [and corruption] committed to their benefit by any person having power to take decisions or exercise control within the legal person as well as for involvement as accessories or instigators in or attempted commission of such fraud [or corruption].

1. Each Member State shall take the necessary measures to ensure that legal persons can be held liable under criminal or administrative law for fraud and corruption which is committed on their account and behalf by any person having de facto or de jure power to take decisions or exercise control within the legal person. Involvement as accessories or instigators in or attempted commission of such fraud or corruption shall be equated with their commission.

(Amendment 7)
Article 2(2)

2. Apart from the cases already provided for in paragraph 1, each Member State shall take the necessary measures to ensure that a legal person can be held liable where the lack of organization, supervision or control by a person referred to in paragraph 1 has made possible the commission of a fraud [or an act of corruption] on behalf of a legal person by a person under its authority.

2. Apart from the cases provided for in paragraph 1, each Member State shall take the necessary measures to ensure that a legal person can be held liable under criminal or administrative law where the lack of organization, supervision or control by a person referred to in paragraph 1 has made possible the commission of a fraud or of corruption on behalf of a legal person or for its account by a person under its authority.

(Amendment 8)
Article 2(3)

3. Liability of a legal person under paragraphs 1 and 2 shall not exclude criminal proceedings against natural persons who are perpetrators, instigators or accessories in the fraud [or corruption].

3. Liability of a legal person under paragraphs 1 and 2 shall not exclude criminal proceedings against natural persons who are perpetrators, instigators or accessories.

1. Each Member State shall take the necessary measures to ensure that a legal person held liable pursuant to Article 2(1) is punishable by effective, proportionate and dissuasive penalties, including in particular the following penalties:

- (a) payment of a fine;
- (b) exclusion from entitlement to public benefits or aid;
- (c) temporary or permanent disqualification from the practice of commercial activities;
- (d) placing under judicial supervision;
- (e) a judicial winding-up order.

1. Each Member State shall take the necessary measures to ensure that a legal person held liable pursuant to Article 2(1) and (2) is punishable by effective, proportionate and dissuasive penalties, including in particular the following:

- (a) payment of a fine or administrative fine;
- (b) exclusion from entitlement to public benefits or aid, or from participation in public procurement;
- (c) temporary or permanent disqualification from the practice of commercial activities;
- (d) placing under judicial supervision;
- (e) a judicial winding-up order, if the purpose or essential activity of the legal person consists of fraudulent or corrupt activities.

(Amendment 10)
Article 3(2)

2. Each Member State shall take the necessary measures to ensure that a legal person held liable pursuant to Article 2(2) is punishable by effective, proportionate and dissuasive penalties or measures.

Deleted

(Amendment 11)
Article 3(3)

3. Each Member State may declare, when giving the notification referred to in Article [X](2), that it will not apply, or will apply only under special conditions, one or more of the penalties listed in paragraph 1(c), (d) and (e).

Deleted

(Amendment 12)
Title III, heading

Confiscation and laundering

Confiscation, dispossession or sequestration of unlawful gain, and money laundering

Each Member State shall take the necessary measures to enable it to confiscate instruments and proceeds of fraud or goods the value of which corresponds to such proceeds.

1. Each Member State shall take the necessary measures to enable it to confiscate instruments and proceeds of fraud or corruption or goods the value of which corresponds to such proceeds and transfer all or part of them to the budget of the European Union.

2. Each Member State shall take the necessary safeguard measures if there is reason to fear that confiscation pursuant to paragraph 1 may otherwise be jeopardized or rendered substantially more difficult. Such measures shall in particular include:
(a) freezing of accounts
(b) seizure of property
(c) prohibiting the alienation or encumbrance of immovable property.

(Amendment 14)
Article 5

Each Member State shall take the necessary measures to establish as a criminal offence laundering as defined in Article 1 of Council Directive 91/308/EEC of 10 June 1991 on the prevention of the use of the financial system for purposes of money laundering, of the proceeds of fraud, at least in cases of serious fraud within the meaning of Article 2(1) of the Convention.

Each Member State shall take the necessary measures to establish as a criminal offence laundering, as defined in Article 1 of Council Directive 91/308/EEC of 10 June 1991 on the prevention of the use of the financial system for purposes of money laundering, of the proceeds of fraud or corruption, at least in cases of serious fraud within the meaning of Article 2(1) of the Convention and comparable serious corruption cases.

Each Member State shall take the necessary measures to ensure that legal persons can be held liable for laundering the proceeds of fraud. In such cases the penalties laid down in Article 3(1) shall apply. The liability of the legal person shall not exclude criminal proceedings against the natural persons who have carried out acts of laundering on behalf of the legal person.

(Amendment 15)
Article 6(1)

1. Member States shall provide mutual assistance for all judicial proceedings relating to fraud in accordance with Article 6 of the Convention.

1. Member States shall provide mutual assistance for all proceedings relating to fraud, corruption or money laundering and in enforcing the penalties resulting from them.

3. Member States shall cooperate among themselves and with the Commission in the fight against fraud.
3. Member States shall cooperate among themselves and with the Commission in the fight against fraud, corruption and money laundering.

(Amendment 17)
Article 6(4), first subparagraph

4. The competent authorities in the Member States may exchange information with the Commission so as to make it easier to establish the facts and to ensure effective prevention of fraud. The Commission and the competent national authorities shall take account for each specific case of the requirements of investigation secrecy.
4. The competent authorities in the Member States may exchange information with the Commission so as to make it easier to establish the facts and to ensure effective prevention of fraud, corruption or money laundering. The Commission and the competent national authorities shall take account for each specific case of the requirements of investigation secrecy.

(Amendment 18)
Article Z(1), first subparagraph

1. [Requests for judicial assistance with regard to fraud may be transmitted directly between judicial authorities and replied to in the same way.
1. Requests for judicial assistance with regard to fraud, corruption and money laundering may be transmitted directly between the competent authorities and replied to in the same way. The judicial assistance requested shall be provided immediately.

(Amendment 19)
Article Z(2)

2. [In pursuance of the objective laid down in Article 6(2) of the Convention and for the purposes of ensuring the effectiveness and consistency of investigations, the latter shall be carried out in concert by the competent authorities whenever a fraud offence concerns more than one Member State or fraud offences concerning more than one Member State are linked with one another.]
2. For the purposes of ensuring the effectiveness and consistency of investigations, the latter shall be carried out in concert by the competent authorities whenever a fraud, corruption or money laundering offence concerns more than one Member State or fraud, corruption or money laundering offences concerning more than one Member State are linked with one another.

The Unit for the Coordination of Fraud Prevention (UCLAF) shall be responsible for coordinating such concerted action in these cases. In the event of a conflict the Commissioner responsible shall act as mediator.

Legislative resolution embodying Parliament's opinion on the draft second Protocol drawn up on the basis of Article K.3 of the Treaty on European Union, to supplement the Convention on the Protection of the European Communities' financial interests (7752/96 - C4-0137/96 - 95/0360(CNS))

(Consultation procedure)

The European Parliament,

- having regard to the Council draft (7752/96 - 95/360(CNS)),
 - having been consulted by the Council pursuant to Article K.6, second paragraph of the Treaty on European Union (C4-0137/96),
 - having regard to Rule 58 of its Rules of Procedure,
 - having regard to the report of the Committee on Civil Liberties and Internal Affairs and the opinion of the Committee on Budgetary Control (A4-0313/96),
1. Approves the Council draft, subject to Parliament's amendments;
 2. Calls on the Council to notify Parliament should it intend to depart from the text approved by Parliament;
 3. Instructs its President to forward this opinion to the Council and Commission.

7. Protection of financial interests *

(a) A4-0288/96

Draft Council Regulation (EC, EURATOM) concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities (8055/96 - C4-0358/96 - 95/0358(CNS))

The draft was approved.

Legislative resolution embodying Parliament's opinion on the draft Council Regulation (EC, EURATOM) concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities (8055/96 - C4-0358/96 - 95/0358(CNS))

(Consultation procedure - Reconsultation)

The European Parliament,

- having regard to the Council draft, 8055/96,
 - having regard to the Commission proposal to the Council, COM(95)0690 - 95/0358(CNS)¹,
 - having regard to its opinion thereon of 22 May 1996²,
 - having been consulted again by the Council pursuant to Articles 235 of the EC Treaty and 203 of the EAEC Treaty (C4-0358/96),
 - having regard to Rule 58 of its Rules of Procedure,
 - having regard to the report of the Committee on Budgetary Control and the opinion of the Committee on Civil Liberties and Internal Affairs (A4-0288/96),
1. Approves the Council draft;
 2. Calls on the Council to notify Parliament should it intend to depart from the text approved by Parliament;
 3. Instructs its President to forward this opinion to the Council and Commission.

¹ OJ C 84, 21.3.1996, p. 10.

² OJ C 166, 10.6.1996, p. 102.

B4-1000, 1001, 1002, 1003, 1004, 1005 and 1006/96

Resolution on minors who are victims of violence

The European Parliament,

- having regard to Title VI of the Treaty on European Union and in particular the provisions on judicial and police cooperation and the setting up of Europol,
 - having regard to its previous resolutions on the rights of the child and on trade in human beings,
 - having regard to the declaration and programme of action adopted by the World Congress against sexual exploitation of children for commercial purposes held in Stockholm from 27 to 31 August 1996,
 - having regard to the 1989 UN Convention on the Rights of the Child,
 - having regard to the January 1996 Council of Europe Convention on the exercise of the rights of children,
 - having regard to the 1950 European Convention on Human Rights,
 - having regard to the September 1996 Council declaration on the sexual exploitation of children,
 - having regard to the Vienna Declaration of 10 and 11 June 1996 on trafficking in women,
 - having regard to previous Council resolutions and declarations on this subject,
- A. whereas children are sacred and the sexual exploitation of children is unacceptable and intolerable,
- B. whereas the scourge of paedophilia, trade in children and sexual exploitation is constantly increasing, not only in isolated cases but also through transnational networks and sex tourism, which involve extreme violence,
- C. whereas the European institutions should review the effectiveness of their current contribution to children's welfare,
1. Shares the grief of the families of the victims and commends their courage and dignity;
 2. Considers that combating the sexual exploitation of children must be an absolute priority for all Member States, and the European Union must support their efforts;
 3. Notes the limits to national action on this issue and therefore calls on the Member States to make proposals for common action establishing a clear and consistent legal framework allowing police and judicial cooperation capable of breaking up the organized child prostitution networks and to ensure that this framework is properly applied, not least in cases where acts of sexual exploitation are committed by EU nationals in non-member countries;
 4. Calls for the introduction of a comprehensive Community action programme, properly funded, to combat sexual offences against children and, in particular, to help implement the measures called for in the Stockholm declaration and draw up general strategies to prevent, combat and punish sexual offences against children both within and outside the Community;

5. Calls on the Council, the Commission and the Member States, each within its sphere of competence, to:
 - (i) adopt a joint action under Article K.3 of the EU Treaty to set up a centralized register of abducted or missing children, pending completion of the Convention on the European Information System;
 - (ii) provide Europol with the resources to enable it to conduct active investigations into criminal networks through exchanges of experience and specialized information on organized crime, particularly crime involving children;
 - (iii) improve judicial and police cooperation to make it possible to recognize and deal properly and consistently with the scourge of paedophilia both within and outside the territory of the Member States;
 - (iv) introduce training courses for law officers and policemen specializing in matters relating to sexual offences against children;
 - (v) set up a EU pilot initiative with adequate financial resources in order to consider, explore and prevent, as a matter of urgency, the sexual exploitation of minors and maltreatment of children, particularly where these are linked to paedophile networks, the Internet and other forms of information technology;
6. Urges the Commission to promote and support at national and European level the setting-up and funding of specialist NGOs to facilitate coordination, prevention and information at European level;
7. Calls on the EU Member States to take urgent and practical measures to counteract sex tourism, not only in the country of departure but also the country of destination;
8. Calls on all Member States to ratify and implement the UN Convention on the Rights of the Child;
9. Calls on the Member States to ensure that, within the framework of a structured dialogue, cooperation and coordination in the areas of combating trade in and exploitation of children, with countries that have applied to join the EU, is not only made a priority but also and above all a clear requirement;
10. Calls on the IGC to incorporate into the future revised Treaty a chapter containing provisions on the human rights of children;
11. Instructs its President to forward this resolution to the Council, the Commission and the governments of the Member States.

11. Racism and xenophobia

B4-1239/95

Resolution on racism, xenophobia and anti-Semitism

The European Parliament,

- having regard to the Joint Declaration by the European Parliament, the Council, the representatives of the governments of the Member States meeting within the Council and the Commission against racism and xenophobia of 11 June 1986⁽¹⁾, and all the resolutions adopted subsequently on this subject,
- having regard to the conclusions of its committees of inquiry into racism and xenophobia⁽²⁾ and its resolutions of 21 April 1993⁽³⁾ on the resurgence of racism and xenophobia in Europe and the danger of right-wing extremist violence, 2 December 1993⁽⁴⁾ on racism and xenophobia, 20 April 1994⁽⁵⁾ on ethnic cleansing, 27 October 1994⁽⁶⁾ and 27 April 1995⁽⁷⁾ on racism, anti-Semitism and xenophobia, and 15 June 1995⁽⁸⁾ on a Holocaust Memorial Day, and insisting again on the recommendations made therein.

(1) OJ C 158, 25.6.1986, p. 1.
 (2) A2-0260/85 and A3-0195/90.
 (3) OJ C 150, 31.5.1993, p. 427.
 (4) OJ C 342, 20.12.1993, p. 19.
 (5) OJ C 128, 9.5.1994, p. 221.
 (6) OJ C 323, 21.11.1994, p. 154.
 (7) OJ C 126, 22.5.1995, p. 75.
 (8) Minutes of 15.6.1995, Part II, Item 17.

Thursday, 26 October 1995

- having regard to the conclusions on racism and xenophobia of the Corfu European Council of 24 and 25 June 1994 and of the Cannes European Council of 25 and 26 June 1995.
 - having regard to Article 14 of the 1950 Convention for the Protection of Human Rights and Fundamental Freedoms, which stipulates that 'the enjoyment of the rights and freedoms set forth in the Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion ...'.
 - having regard to Article F (2) of the Treaty on European Union.
 - having regard to the final report of the Consultative Commission on Racism and Xenophobia as submitted to the European Council in Cannes in June 1995.
- A. whereas the existence of multi-ethnic and multi-cultural societies is in line with the ideals of the European Union and whereas successful measures against intolerance, discrimination and violence caused by racism, xenophobia and anti-Semitism are essential if the goal of a closer union among the peoples of Europe is to be achieved.
- B. whereas, at the same time, racism, xenophobia, anti-Semitism and ethnic cleansing strategies and expulsions represent the dark side of European history, have left deep and lasting wounds and still persist in many places on our continent.
- C. whereas racism, xenophobia and anti-Semitism must be met with a package of suitable practical measures, above all where these would be most effective and have most impact, i.e. at local and national level.
- D. whereas there is nevertheless a fundamentally European dimension, based on free movement of persons and the fact that differences in legislation mean that behaviour or actions which are not permitted in one Member State can still reach that Member State from across the border of another Member State or from across the external borders of the Community.
- E. whereas the Commission has used the Treaty to take measures in the social field to combat racist phenomena and to strive for non-discrimination, and whereas in this respect further measures are contained in the Social Action Programme for the medium term (1995 to 1997).
- F. whereas some citizens of the Union continue to suffer racist, xenophobic and anti-Semitic attacks in their daily lives, in particular when exercising their right to freedom of movement.
1. Welcomes the final report of the Consultative Commission on Racism and Xenophobia as an important document to form the basis for the forthcoming work within the Union and its Member States to curb racism, xenophobia and anti-Semitism;
 2. Regrets that the European Council in Cannes displayed a political unwillingness to adopt an overall strategy against racism, xenophobia and anti-Semitism;
 3. Urges the Council under the Spanish presidency, which has assumed a positive attitude towards the conclusions in the Commission report, to ensure that the Consultative Commission's work is fully utilized;
 4. Calls as a matter of urgency on the Spanish Presidency of the Council to do everything in its power to conclude, in time for the next meeting of the Justice and Home Affairs Council on 23 November 1995, the discussion on the draft joint action by the Member States on measures to combat racism, xenophobia and anti-Semitism, an action which should include a requirement concerning conduct by the Member States;
 5. Welcomes the progress report from the Chairman of the Reflection Group on the 1996 Intergovernmental Conference which stresses the need to ensure full observance of fundamental rights in the Union, and supports the idea of incorporating provisions concerning the following issues into the EU Treaty:
 - (a) condemnation of racism, xenophobia and anti-Semitism, and
 - (b) extension of Article 6 (hitherto of the EC Treaty) to prohibit all forms of discrimination;
 6. Calls once more upon the Commission to submit a proposal for an anti-discrimination Directive as a matter of urgency;

Thursday, 26 October 1995

7. Calls on the Council to send a clear political signal regarding its commitment to the fight against racism, xenophobia and anti-Semitism by complying with the decisions of the European Parliament under the 1996 budgetary procedure which seek to give financial support to measures designed to implement a global policy of non-discrimination at Union level;
8. Calls on the governments of the Member States to:
 - ratify all international instruments concerning the fight against all forms of racial discrimination,
 - guarantee the protection of persons against any form of discrimination on grounds of race, colour, religion or national or ethnic origin,
 - promote equal opportunities for groups of persons who are most vulnerable to discrimination, particularly women, young people and children;
9. Calls on the Member States and the Commission to promote research and production of educational material and the arranging of international courses, 'round table' discussions, youth exchanges, exhibitions, media campaigns etc. on racism, xenophobia and anti-Semitism;
10. Calls for special training programmes for public servants and especially the police and judiciary in order to promote tolerance and understanding of different cultures and to prevent discriminatory behaviour;
11. Calls on the European Ombudsman to submit an annual report on the complaints of Union citizens and to give special attention to incidents with a racist, anti-Semitic or xenophobic background;
12. Is of the opinion that incitement to racism and the production and distribution of and support for racist, xenophobic and anti-Semitic material and theses as well as any revisionist claims denying the reality of the Holocaust should be treated as criminal offences throughout the European Union and therefore requests all the Member States to adapt their legislation accordingly;
13. Calls on the Council, the Commission and the governments of the Member States to strengthen their support for movements actively participating in the fight against racism and xenophobia;
14. Suggests that the Council transfer the mandate of the Consultative Commission on Racism and Xenophobia to the Community institutions in order to ensure adequate coordination of the work of the controlling parliamentary body and of the Commission in combating racism, xenophobia and anti-Semitism;
15. Considers, however, that this should not occur until the Consultative Commission has completed its current work programme with regard to the establishment of an EU Observatory on Racism and Xenophobia;
16. Urges the Consultative Commission to reiterate its demand for a Treaty change in 1996 to include unambiguously therein the fight against racism and xenophobia;
17. Strongly supports the idea that any EU Observatory on Racism and Xenophobia should be an institution of the EU, that would cooperate with the Council of Europe and be active in combating racism on the basis of its work;
18. Instructs its President to forward this resolution to the Consultative Commission on Racism and Xenophobia, the Council, the Commission, the Economic and Social Committee, the Council of Europe and the governments and parliaments of the Member States and applicant countries.

Supplementary Annexes

Thursday, 20 January 1994

11. Participation by Parliament in international agreements in the fields of justice and home affairs

A3-0436/93

Resolution on participation by the European Parliament in international agreements by the Member States and the Union on cooperation in the fields of justice and home affairs

The European Parliament,

- having regard to the Treaty on European Union signed at Maastricht on 7 February 1992, which entered into force on 1 November 1993, and in particular Title VI thereof,
 - having regard to the Convention determining the State responsible for examining applications for asylum lodged in one of the Member States of the European Communities, the Dublin Convention on the right of asylum,
 - having regard to the draft Convention on the crossing of EC external borders,
 - having regard to the Convention applying the Agreement between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic, on the gradual abolition of checks at their common borders, the so-called Schengen Implementation Agreement,
 - having regard to its resolution of 15 July 1993 ⁽¹⁾ on cooperation in the fields of justice and home affairs under the Treaty on European Union (Title VI and other provisions),
 - having regard to the Rules of Procedure of the European Parliament (and in particular Chapter XVI, Rules 93 and 94), which entered into force on 1 November 1993,
 - having regard to the motion for a resolution by Mr Malangré and Mr Jarzembowski on internal security in the Community (B3-0996/93),
 - having regard to Rule 148 of its Rules of Procedure,
 - having regard to the report of its Committee on Civil Liberties and Internal Affairs (A3-0436/93),
- A. whereas cooperation between the Member States in the fields of justice and home affairs is among the main tasks facing the European Union and indirectly affects the rights and obligations of citizens of the Union and whereas the European Parliament should therefore effectively participate in drawing up and implementing international agreements in this area,
 - B. whereas this main task must be carried out in relation to the free movement of persons and citizenship of the Union provided for by the Treaty,
 - C. concerned that cooperation among the Member States in the field of police cooperation is conducted by means of the regular meetings between the ministers concerned and of working parties, through 'joint action', 'resolutions' and 'statements', for which there is no basis in the Treaties, thereby excluding not only the Institutions of the Union but also the parliaments and courts of the Member States,
 - D. whereas cooperation in the above spheres which in the past consisted almost exclusively of intergovernmental agreements must be integrated in the medium term in the activities of the European Community and whereas a transitional solution between the institutions of the European Union should now be reached to enable Parliament to effectively participate in the drawing up and implementation of international agreements in this area,

⁽¹⁾ OJ C 255, 20.9.1993, p. 168.

Thursday, 20 January 1994

- E. whereas the above principles must also be recognized by the countries which are applying for accession and the European Union should therefore incorporate these objectives in the negotiations for accession,
- F. whereas agreements in the fields of justice and home affairs are also concluded at international conferences and talks, for example under the auspices of the Council of Europe and with East European or North American states; whereas the European Parliament, like the parliaments of the Member States, should be informed of such agreements and able to participate in them effectively,
- G. whereas even international agreements concluded only between individual Member States, for instance the Convention applying the Schengen Agreement, in practice govern cooperation in the fields of justice and home affairs in the European Union and affect the rights and duties of the citizens of this Union and whereas the European Parliament should therefore also effectively participate in these cases,
- H. whereas texts concerning cooperation with regard to the right of asylum (for example concerning unfounded applications) by which the Member States are bound are also already interpreted at national level as international obligations, and whereas it is therefore no longer possible to distinguish them from international agreements except in terms of form,
- I. whereas the joint positions referred to in Article K.3, in so far as they concern regulatory provisions, and agreements are unquestionably among the main aspects of the activities in the fields referred to in Title VI of the Treaty on European Union and whereas, as the Presidency is required to ensure that the views of the European Parliament are duly taken into consideration, this consultation must be carried out in advance,
- J. whereas it is desirable to distinguish clearly between three categories of procedures: procedures provided for by the Treaty establishing the European Community, procedures provided for by Title VI of the Treaty on European Union, and procedures provided for by normal international conventions among the 12 Member States outside the sphere of the Union,
1. Calls on the Council and Commission forthwith to enter into negotiations with Parliament on the conclusion of an interinstitutional agreement on participation by the European Parliament in international agreements by the Member States as referred to in Title VI of the Treaty on European Union;
 2. Is firmly convinced that such an agreement must contain at least the following elements:
 - (a) Parliament must be notified immediately of any initiative taken by one or more Member States, the Council or Commission to draw up a new agreement; Parliament must be given due opportunity to make its views known before the Council takes a decision; Parliament should also participate in the decision whether such an agreement is desirable and if so, whether it would not be preferable to implement the procedure provided for in Article 100c of the EC Treaty in conjunction with Article K.9 of the Treaty on European Union,
 - (b) Parliament shall fully participate in deliberations between the Member States, the Council and Commission on the contents of any such agreements; The Coordinating Committee provided for in Article K.4 of the Treaty on European Union and the relevant parliamentary committee shall engage in close cooperation on this matter,
 - (c) Parliament must give its assent before any such agreement can enter into force. The agreement must contain provisions on this matter and stipulate that the Court of Justice shall have jurisdiction to interpret its provisions, in accordance with the last subparagraph of Article K.3(2),
 - (d) Parliament and its relevant committee must be regularly notified of the implementation of any agreement and, if necessary, participate in amending the agreement, even through its own proposals,
 - (e) the above principles shall apply *mutatis mutandis* to the implementation arrangements in respect of agreements,
 - (f) the above principles shall apply *mutatis mutandis* to agreements to be concluded with third countries;

Thursday, 20 January 1994

3. Calls on the Council and Commission forthwith to introduce these proposals for an interinstitutional agreement in the negotiations for accession and to notify Parliament of the positions adopted by the applicant countries;
4. Calls on the individual Member States officially to notify it whether they are prepared to support and actively to promote Parliament's participation in the drawing-up and implementation of agreements even where these agreements are concluded between individual Member States, as in the case of the Convention applying the Schengen Agreement and agreements with third countries in the fields of justice and home affairs and believes that, *inter alia* and as a matter of priority, the Schengen agreements, the Dublin Convention and the statements, resolutions, joint positions etc. concerning refugees should be replaced with agreements pursuant to Title VI of the Treaty on European Union;
5. Takes the view that in the fields of justice and home affairs Parliament should also be involved, by means of a special procedure, in agreements between Member States which have not been concluded in accordance with the procedure laid down in Title VI of the Treaty on European Union;
6. Wishes to receive from the Council presidency within six months an overview of all existing agreements and other binding texts (of an international nature) such as resolutions of the immigration ministers etc. involving the Member States, and together with this overview a statement of the Council's views as to which agreements or texts ought to be replaced with an instrument based on the Treaty establishing the European Community or Title VI of the Treaty on European Union;
7. Instructs its President to forward this resolution to the Council, the Commission and the governments and parliaments of the Member States and the States applying for accession.

12. Allowances for travellers from third countries

A3-0005/94

Proposal for a Council Directive amending Directives 69/169/EEC and 77/388/EEC and increasing the level of allowances for travellers from third countries and the limits on tax-free purchases in intra-Community travel (10286/93 — C3-0511/93)

The proposal was approved with the following amendments:

TEXT PROPOSED
BY THE COUNCIL

TEXT AMENDED
BY PARLIAMENT

(Amendment 1)

Recital 7

Whereas it is necessary to ensure, during the period when these sales are authorized under the provisions of Article 28k of Council Directive 77/388/EEC of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment, that the real value of goods likely to be sold in tax-free shops to travellers on intra-Community flights or sea crossings is maintained,

Deleted

11. Justice and home affairs

B4-1460/95

Resolution on the progress made in 1995 in the implementation of cooperation in the fields of justice and home affairs pursuant to Title VI of the Treaty on European Union

The European Parliament.

- having regard to Article K.6 of the EU Treaty,
- having regard to Rule 93(2) of its Rules of Procedure,

Thursday, 14 December 1995

- having regard to its resolutions of 13 December 1994 on the progress made during 1994 in the implementation of co-operation in the fields of justice and home affairs pursuant to Title VI of the Treaty on European Union ⁽¹⁾, 21 September 1995 on the Communication from the Commission to the Council and the European Parliament on immigration and asylum policies ⁽²⁾ and 22 September 1995 on the draft Council resolution on the admission of third-country nationals to the territory of the Member States of the European Union for study purposes, on the draft Council resolution relating to the limitations on the admission of third-country nationals to the territory of the Member States for the purpose of pursuing activities as self-employed persons, on the draft Council conclusions on the organization and development of the Centre for Information, Discussion and Exchange on the crossing of frontiers and immigration ⁽³⁾,
- A. whereas the Union possesses a unique institutional framework and respects the fundamental rights and national identity of its Member States, whose systems of government are based on democratic principles,
- B. whereas intergovernmental conventions have very clearly shown their weakness as a legal method of developing European integration in the field of justice and home affairs,
- C. whereas conventions and other Council decisions which are interpreted differently in the individual Member States call the rule of law into question, and whereas it should be in the interest of democratic Member States to have a common interpretation of the conventions and other texts which would lead to common basic principles,
- D. whereas the Presidency and the Commission must regularly inform the European Parliament of discussions in this area, pursuant to the first paragraph of Article K.6 of the Treaty on European Union, and whereas the Presidency must consult the European Parliament on the principal aspects of activities in these areas and ensure that its views are 'duly taken into consideration', as stipulated in the second paragraph of Article K.6 of the Treaty,
- E. whereas the absence of compensatory measures and the slow pace of the relevant decision-making process cannot be used to justify the failure to complete the abolition of frontier controls; recalling that Article 7a of the EC Treaty provides for the free movement of persons to be introduced by 31 December 1992 and that improvements are needed in this area if the agreed objectives are to be achieved,
- F. whereas the free movement of persons includes citizens of third countries residing legally on the Union's territory and whereas freedom of movement, as well as the compensatory measures it entails, fall within the jurisdiction of the first pillar,
- G. whereas the Council has taken the following decisions under the third pillar, representing a marked increase in decisions taken compared to 1994:
 - joint action No 95/73/JHA on the Europol Drugs Unit,
 - the Convention on simplified extradition procedure between the European Union Member States,
 - a resolution on the minimum guarantees required for procedures on applications for asylum (doc. 5354/94 ASIMM 70),
 - the Europol Convention,
 - the Convention on a customs information system,
 - the Convention on protection of the Community's financial interests,
 - joint action on the budget,
 - a resolution on burden-sharing with regard to the reception and temporary abode of displaced persons,
 - conclusions on an alert and emergency procedure for burden-sharing with regard to the reception and temporary abode of displaced persons,

(1) OJ C 18, 23.1.1995, p. 39.

(2) Minutes of that Sitting, Part II, Item 7.

(3) Minutes of that Sitting, Part II, Points 50a, (b) and (c).

Thursday, 14 December 1995

- a convention on insolvency procedures,
- regulations on the Management Board of Europol,
- resolution on the protection of witnesses in the fight against international organized crime,
- two agreements in principle on joint actions:
 - definition of the term 'refugee'
 - airport transit,
- an agreement in principle on a resolution on the status of third-country nationals residing for long periods in the European Union,
- the Comera Declaration against terrorism,
- agreement that acts and treaties adopted in the field of asylum and immigration should be published in the Official Journal of the European Communities,

and whereas the work of the JHA Council of 23 November 1995 reflects the Presidency's determination to move towards a European civil judicial area and to ensure greater transparency in Council acts,

- H. disappointed at the outcome of the JHA Council meeting on 23 November 1995, which failed to adopt the joint action against racism and xenophobia, and at the common position adopted on harmonizing the concept of refugee, which restricts the scope of the Geneva Convention in that it recognizes as refugees only those persons persecuted by state authorities,
- I. whereas the problems encountered in applying the Schengen Agreement demonstrate that the intergovernmental mechanism alone is completely unsatisfactory and should be replaced by another, more binding and democratic mechanism,
- J. whereas the Council keeps its documents secret and the Court of First Instance quashed, on 19 October 1995, a Council Decision refusing to grant access to its documents, and whereas the Council must now, as it has been asked to do by the President of the European Parliament, take action to ensure that its proceedings are made public as befits the legislator or co-legislator in a democracy,
- K. whereas it is surprising that, in connection with Title VI, the Council keeps secret from the European Parliament proposals for common positions, joint actions, agreements and possible implementing measures on which the European Parliament must be consulted pursuant to Article K.6,
- L. whereas the application of Article K.9 requires unanimity,

1. Notes that the implementation of cooperation in the fields of justice and home affairs is still characterized by the same problems and the same omissions as those emphasized in its authorization resolution of 13 December 1994,

2. Considers that the obvious weakness of the third pillar derives from:
- the lack of clear political objectives in Title VI of the EU Treaty;
 - the questionable way in which responsibilities have been divided among the Community (first pillar), cooperation in the field of justice and home affairs (third pillar) and the Member States;
 - the requirement of unanimity which either leads to stalemate or leads to minimal decisions, reduced to the lowest common denominator of the laws of the various Member States;
 - the instruments provided for under Article K.3, leading to disputes as to whether or not the common positions and actions are binding, and cumbersome and complex conventions;
 - the restrictive interpretation of intergovernmental cooperation by the Council and certain Member States and their desire to perpetuate intergovernmental practices;
 - the lack of adequate judicial supervision by the Court of Justice;
 - the unwillingness of the Member States to make use of all the resources of Title VI, Articles K.3 and K.4 (the possibility of using qualified majority voting in some cases and stipulating that the Court of Justice shall have jurisdiction) and Article K.9;

Thursday, 14 December 1995

3. Notes that none of the recommendations made to the Council in its aforementioned resolution of 13 December 1994 has been put into effect; wonders exactly what the Council regards as taking the views of the European Parliament 'into consideration'.

4. Notes and regrets, in particular, that successive Presidencies have interpreted too narrowly and thus failed to comply with the obligations placed upon them by Article K.6 of the Treaty on European Union, namely:

- the obligation to regularly inform the European Parliament pursuant to the first paragraph of Article K.6, which means, in practice, providing regular information to its Committee on Civil Liberties and Internal Affairs; the form and content of such information must be in keeping with the institutional role incumbent upon the European Parliament;
- the obligation to consult the European Parliament;
- the obligation to take into account the views of the European Parliament;

and calls on the Council and Commission forthwith to resume negotiations with Parliament on the proper implementation of Article K.6;

5. Considers it unacceptable that the Council should add to the Union's democratic deficit by failing to inform the European Parliament in good time of its agenda and the documents before it and calls on the Council to act according to the spirit of the treaties;

6. Considers that the appearance before the Committee on Civil Liberties and Internal Affairs of the President-in-Office of the Council has not been enough to ensure effective parliamentary supervision or transparent, democratic practices in a range of matters directly affecting the fundamental rights of citizens;

7. Once again, criticises the lack of openness in and democratic and judicial supervision of decisions taken at the level of the Council and expresses its concern with regard to respect for individual liberties and guarantees of legal protection for citizens in the areas covered by the third pillar; regrets the greater lack of transparency due to the fact that Council decisions in the fields of justice and home affairs are virtually never published in the Official Journal;

8. Considers it unacceptable that most decisions adopted by the Council were forwarded to it only after their adoption, and urges the Council to change such practice in future;

9. Criticises, once more, the Council's practice of adopting resolutions, recommendations, conclusions and declarations, instruments which are not mentioned under Title VI of the Treaty on European Union and which, moreover, are not published in the Official Journal; considers that, if this practice does not change to one of greater cooperation with the European Parliament, the Council is in fact constructing a 'non-law' area which is unacceptable from the point of view of democracy;

10. Recalls that Title VI of the Treaty on European Union is intended, 'without prejudice to the powers of the European Community' to complement the latter and to contribute to the achievement of the objectives of the Union, and takes the view that the lack of a clear demarcation in law between the respective powers of the first and the third pillar is a source of serious problems and ambiguity;

11. Considers, as it did last year, that steps must be taken to apply Article K.9 of the Treaty on European Union, particularly as regards asylum and immigration, and so calls on the Commission to submit proposals to that end;

12. Considers that, if national vetoes block the transfer of cooperation in the field of justice and home affairs from the third to the first pillar, the Council should be open to other solutions aimed at finding a different legal framework in order to increase cooperation in these issues;

13. Regrets that it was not consulted on the Europol Convention, one of the 'principal aspects of activities' mentioned in the second paragraph of Article K.6 of the EU Treaty, before the Council reached its decision, and that the Presidency failed to take due account of the views of the European Parliament;

14. Regrets that, with reference to Europol, it did not prove possible to reach a decision about the involvement of the Court of Justice, and considers that those Member States which, in Council, refused to give the Court of Justice a role, are excessively timid and would appear to wish to exempt police services from adequate judicial supervision;

Thursday, 14 December 1995

15. Reiterates that the challenges facing the European Union, such as providing greater internal security and coping with the growing migratory pressures, must be handled by the Council in a way which preserves the human rights of those living in the European Union, and which does not diminish individual safeguards; any shortcoming exposed must be immediately rectified;

16. Notes that, unless the Commission is given a substantial role, the Council Presidency and the Member States meeting within the Council will have too much room for manoeuvre, thereby enabling them to impede progress in the sphere covered by Title VI and to pursue purely national interests;

17. Calls on the Commission to reorganize the present structure within its Secretariat-General, and the resources committed to it, so that it can be more efficient in providing the European Parliament with information, and more active in the exercise of the right of initiative expressly granted to it in the Treaties and in the drawing up and implementing of the budget;

18. Continues to be anxious at the existence within the Council of permanent structures composed of experts from the Member States (CIREA, CIREFI, etc.), which reinforce the lack of democratic control within the EU and whose work is liable to duplicate that already carried out by the Commission; calls on the Council to change these structures in accordance with its aforementioned resolutions of 21 and 22 September 1995;

19. Deplores the fact that citizens' expectations have been largely disappointed in this sphere, which is so important for individual freedoms and so fundamental to achieving genuine European citizenship;

20. Reiterates its hope that the 1996 Intergovernmental Conference will make the necessary changes to the Treaty in order to rectify these shortcomings;

21. Calls on the Council not to delay strengthening the third pillar, as urgently needed, until the Intergovernmental Conference but to take the necessary action as from now, following an in-depth debate among its members, to determine binding objectives and joint political interests, so as to make progress in implementing the general objectives of the EU Treaty;

22. Reiterates its request that the Council and the Commission should draw up each year, or periodically, a detailed report on the decisions taken by the Council and its activities and future initiatives and on the manner in which the Presidency has responded to the views expressed by the European Parliament in its resolution winding up the previous year's annual debate; such a report should be made available to the Parliament; the Parliament is to play an active part in supervising and formulating actions under the third pillar, and ascertain the extent to which its views have been taken into account;

23. Finds it unacceptable that the joint action against racism and xenophobia has not been adopted, and also considers the restrictive interpretation of the concept of refugee to be unacceptable; calls on the Madrid European Council, therefore, to adopt the above-mentioned joint action and interpret the notion of refugee in a manner more in keeping with the idea of protection which is one of the objectives of the Geneva Convention;

24. Calls on the Council to take measures to ensure that the ministries of the interior and of judicial affairs of the Member States cooperate more regularly and efficiently in order to promote common solutions to common problems;

25. Welcomes the cooperation being developed by the Council and Commission with third countries on issues such as serious international crime, drug-trafficking, criminal enterprises and terrorism; points out that to respond to these issues the Union must organize itself better, which includes making provision for proper consultation of the European Parliament under Article K.6;

26. Instructs its President to forward this resolution to the Council, the Commission, the Economic and Social Committee and the governments and parliaments of the Member States.

Thursday, 15 June 1995

33. Calls for the creation of a genuine European scientific exchange area:
- encouragement of mobility and training for European scientists;
 - increased cooperation between European research centres;
 - support for the organization of scientific conferences and seminars to ensure a large-scale exchange of information;
 - the creation of a database, using the results of Community programmes in the field of education and training, focusing on technological innovation;
34. Instructs its President to forward this resolution to the Commission and the Council.

12. Action plan to combat drugs

A4-0136/95

Resolution on the communication from the Commission to the Council and the European Parliament on a European Union action plan to combat drugs (1995 to 1999) (COM(94)0234 – C4-0107/94)

The European Parliament,

- having regard to the Communication from the Commission to the Council and the European Parliament (COM(94)0234 -- C4-0107/94),
 - having regard to the Treaty on European Union, in particular Article K.1(4) and (9) thereof, and to the EC Treaty, in particular Article 129 thereof,
 - having regard to its resolutions of 9 October 1986 on the drug problem ⁽¹⁾ and 13 May 1992 on the work of the Committee of Inquiry into Drugs Trafficking ⁽²⁾, in connection with the reports of its Committees of Inquiry into the Drugs problem, and into the spread of organized crime linked to drugs trafficking,
 - having regard to the report of the Committee on Civil Liberties and Internal Affairs and the opinions of the Committee on Social Affairs and Employment, the Committee on Budgets, the Committee on Development and Cooperation, the Committee on Foreign Affairs, Security and Defence Policy, the Committee on External Economic Relations, the Committee on Economic and Monetary Affairs and Industrial Policy, the Committee on the Environment, Public Health and Consumer Protection, and the Committee on Culture, Youth, Education and the Media (A4-0136/95),
- A. whereas drugs policy is to be regarded as a shared competence between the European Union and the Member States,
- B. whereas it is in the interest of the European Union to restrict the demand for drugs, and to take precautions in different forms to combat personal use, dependence and need for drugs,
- C. whereas the main institutional developments since 1992 have been the coming into force of the Treaty of European Union with its specific references to drugs, the setting up of the Europol Drugs Unit in The Hague, and the setting up of the European Monitoring Centre for Drugs and Drug Addiction in Lisbon, supported by the network of national information centres on drug addiction known as Reitox,
- D. whereas the rise of new drugs markets and trafficking syndicates in the countries of Central and Eastern Europe, and the channelling of funds into legitimate business concerns by the Mafia and other criminal organisations are giving rise to new problems,

⁽¹⁾ OJ C 283, 10.11.1986, p. 79.

⁽²⁾ OJ C 150, 15.6.1992, p. 41.

- E. whereas, so long as there is a demand for drugs, and there always will be, there will be a supply,
- F. whereas present policies have by no means prevented illicit drug trafficking from thriving for years now and whereas it is more intense than ever before,
- G. whereas there is a discrepancy in some European Union Member States between drugs policy actually implemented at regional level and in towns and cities and the official position on drugs at national level,
- H. whereas methods for collecting information on crops is presently uncoordinated and wildly divergent and whereas monies allocated to eradication of opium and coca plantations and the consequent provision of alternative crops has been largely wasted as the drugs trafficker is always able to increase the price offered for drug crops way above the prices of substitute crops,
- I. considering the vital importance of a global and integrated strategy to combat the multi-faceted problem of drugs and drug addiction which is linked to social scourges such as social exclusion and unemployment in the European Union,
- J. considering the lack of adequate financial provisions both at national and EU levels, strongly suggests the use of assets seized in drug enforcement operations to provide increased financial assistance for actions aimed at drug reduction and rehabilitation programmes targeted, particularly, at high risk groups,
- K. whereas the Commission communication despite many merits including the recognition that the drugs problem must be tackled as an integrated whole fails to put across the problem in human terms, fails to analyse in sufficient detail the causes and effects of this phenomenon and would have been weightier if the Commission had presented the Action plan to combat drugs and the proposals on the prevention of drug addiction as interrelated,
- L. whereas this is in part due to difficulties arising from the division of competence in drug matters brought about by Article K of the Treaty on European Union,
- M. whereas high echelons of the European Commission, the United Nations Programme for Drug Control, the State Department in Washington and others have all made it clear that the Treaty on European Union far from improving resolve and effectiveness in tackling drugs on a coordinated basis has led to obfuscation and a new confusion over 'who should be doing what',
- N. whereas, despite improvements in a number of sectors, there is still insufficient cooperation between countries of the European Union themselves and with the United States; this is instanced by differing individual policies within areas such as the Caribbean and others providing tax havens and easy access for drug traffickers, in linking intelligence centre networks, in cooperation over money laundering techniques and systems and in implementing training and equipment programmes in Eastern Europe particularly along the borders with the EU,
1. Calls upon the European Council to adopt the 1995 to 1999 Action Plan which recognises that prevention and harm reduction must be given at least as much attention as the laws and penalties relating to drugs and drug-trafficking and insists that clarity of responsibility between the Commission and the Council must be established to ensure that progress is not delayed;
 2. Stresses that the Action Plan must tackle all links in the chain, from sourcing through criminal trafficking, to education, health and rehabilitation;
 3. Calls on the Commission to work out practical details of the action plan as quickly as possible;
 4. Recommends that the Commission and the Council study and give serious consideration to possible alternatives to strategies pursued so far on the basis of a scientific and statistical study of the actual results of the present strategy;
 5. Insists on the need for cooperation and not rivalry between the Institutions of the European Union and their related bodies, through a clear setting of objectives and definition of roles;

Thursday, 15 June 1995

6. Believes that, too often, anti-drugs policies make insufficient distinction between consumers and traffickers and that, in future, efforts should therefore be concentrated on a cracking down on organized crime which runs trafficking in illicit drugs; drug addicts should be offered health care and social welfare programmes that are not likely to be hindered by crackdowns;

7. Considers that questions relating to a reduction in demand should be considered on the grounds that the best form of prevention is one involving policies designed to reduce vulnerability which help to reduce unemployment, poverty and social exclusion and eradicate racism and xenophobia and which contribute to greater academic success, better training, better living conditions, greater stability and improved dialogue within both society and the family;

8. Wishes to see more extensive cooperation and permanent dialogue with all international organizations involved in combating the drugs problem, and also with the third countries concerned;

9. Asks that the report to be drawn up by the Commission in the second half of 1996, together with the adjustments which are deemed necessary, will also be submitted to the European Parliament;

as regards the Council

10. Pending revision of the Treaties, asks for maximum use of the possibilities for action in the fields of justice and home affairs under Title VI of the Treaty on European Union, in particular

- (i) further increase in police and customs cooperation using intelligent tools such as computer data bases, satellite communication and profiling techniques to combat drug trafficking;
- (ii) conclusion of the Europol Convention before the Cannes European Council, in conjunction with the adoption of the necessary measures to ensure that the Europol Drugs Unit can operate effectively while the Convention is being ratified, on condition that provision is made for appropriate judicial and (inter)parliamentary scrutiny, for the European Court of Justice and the European Court of Auditors to be given jurisdiction, for practical and effective protection of human rights, of privacy and of the right of the citizens concerned to have access to information where it is collected;
- (iii) as regards Europol wishes to see the creation of an effective central system for collecting information concerning the activities, methods and development of international organized crime, and drugs trafficking in particular. This should be done in such a way that the information can be used effectively by Member States in dealing jointly and severally with criminals and the syndicates and operations that they organize;
- (iv) insists that Europol must coordinate its activities with Interpol, the United Nations International Drug Control Programme (UNDCP), the GAFI and with United States information sources to eliminate costly and unnecessary duplication and to agree upon roles to ensure maximum effectiveness. Recommends that an international crime committee should be set up to achieve this objective;
- (v) hopes that arrangements will be worked out in the EU whereby movable and immovable goods seized from persons convicted of drugs-related crimes can be declared forfeit throughout the territory of the Union; the funds collected in this manner should be used to finance rehabilitation and support measures for drug-addicts, prevention of drug addiction, the fight against drug trafficking and cooperation with international organizations;
- (vi) whilst recognizing that sentencing of drugs traffickers and others involved in the drugs trade must be for national courts to decide, nonetheless strongly recommends that there should be as close an approximation as possible and a full exchange of information between Member States on sentencing practices. In particular this must have as a main objective to give no safe refuge in the EU to large-scale organized criminals and their gangs;
- (vii) simplifying and speeding up the extradition process between Member States (which up to now have been governed by the European Convention on Extradition, to which all Member States except Belgium are parties), by implementing or agreeing the relevant Conventions on simplified procedures, on which the European Parliament must be consulted by the Council in due time, and on relaxing or removing the legal conditions which enable extradition to be refused;

Thursday, 15 June 1995

11. Stresses the urgent need for an increase in human and technical resources at the major entry ports of the European Union so that there is no lack in profiling and analytical capability; hopes, wherever possible, that multinational units can be established to facilitate communication with likely countries of destination of suspected drugs shipments and to further improve the technique and use of 'controlled deliveries';

as regards the European Commission

12. Calls on those Member States which have not yet fully implemented the EC Directive on the prevention of the use of the financial system for the purpose of money laundering to do so as soon as possible; considers that it should be extended to other countries, in particular those of the EEA; calls for more thorough and coordinated measures to be taken within the EU and with FIN-CEN in the United States to tackle this increasingly important dimension in world organized crime and calls for proposals for more thorough and coordinated measures to tackle money laundering, stressing the special responsibility of banks and financial institutions for ensuring that their training arrangements concerning interception techniques are effective and that there should be dramatically increased investment in the latest techniques and equipment for tracking black money movements and those that organize these; stresses that the focus should be on investigating in which areas of the economy proceeds from crime are reinvested and what impact such reinvestment has on the sectors concerned;

13. Considers that legislation should be adopted concerning the prevention of money laundering involving the economic sectors which are increasingly used for such a purpose;

14. Calls on the Commission to look into reports by the European media that certain European countries are producing narcotic substances for the purposes of trafficking;

15. Asks the Commission to promote in the framework of Directive 91/308/EEC the constitution of a permanent coordination body between the financial institutions of the Member States, in order to exchange information concerning suspicious transactions and to support all police cooperation bodies within Europe involved in combating drug trafficking;

16. Underlines its recommendation to establish closer links between large chemical manufacturers and chemical associations and to eliminate obstacles to inspection;

17. Considers it essential for Community law on the control of the illegal production and sale of certain substances used in the production of narcotics and psychotropic drugs to be extended to all the Member States and taken up by all the EEA countries. Also considers that it should continue to be incorporated into bilateral agreements to be concluded with all sensitive third countries;

18. Subscribes to the Commission's call for the setting-up of a centralized system for collecting scientific data based on a technical analysis of drug seizures in Europe;

19. Calls for a detailed assessment to be made of pilot alternative-development projects in countries producing drug crops;

20. Asks for a coordinated full-scale survey across all states of the EU and in the countries of Central and Eastern Europe of the growth of organized crime linked to drugs trafficking and money laundering, but also of corrupt practises involving government bodies and politicians, which benefit organized crime;

21. Calls for the promotion of even better international cooperation by EU countries, always within the framework of the UN Drugs Control Policy and its Conventions;

22. Requests a comprehensive survey into the state of drugs and drug addicts within prisons across the EU and policies effected to assist drug addicts in prisons, to rehabilitate themselves into society after release, and wherever possible to find alternatives to prison for drug users where other crimes are not involved;

Thursday, 15 June 1995

23. Recommends, with the information available from these surveys, to examine the effects of drugs policies being carried out in different countries, including aid initiatives, in order to ascertain which are most effective and so come close to a common approach to the whole subject of tackling crime and the drugs problem in the most effective way possible, in terms of both crackdowns and prevention, and to make the results of the surveys available to both the European Parliament and national parliaments;

24. Stresses that such an examination should include an in-depth comparison between the risk-reduction policies being carried out by cities such as Frankfurt, Hamburg, Amsterdam and Zurich, which are signatories to the Frankfurt resolution of 22 November 1990 and are members of the organization European Cities on Drug Policy (ECDP) on the one hand and the stricter drug control policies being carried out by cities such as Berlin, Dublin, London, Paris, Madrid and Stockholm and 19 other European cities which are signatories to and members of the 'European cities against drugs';

as regards the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA)

25. Recognizes that in the EU there are different approaches to the drugs problems as instanced by the attitude towards cannabis in the Netherlands compared to Germany, and consequently stresses the need for the Centre to set out those differences through multidisciplinary research associating policy options such as repression, prevention and harm reduction and also the situation in the field of public health, criminality and corruption, in coherent policy impact reports; also stresses the need for the Centre to give priority to establishing a data base showing the number and trend of different drugs being used, the effects upon users and addicts, the findings of both medical and epidemiological research and research into the background to and social reasons for drug use and the responsibility of drug users themselves; the data base should also stress the efficacy of different measures being applied at not only national but also regional and local level, the effect of criminal acts being carried out by drug users to obtain monies for purchasing drugs and the consequent stability of society, with the data base relating to each aspect of the policies in force and of the pilot projects so as to provide an accurate assessment of their scope, costs and effectiveness, taking account of the health and social aspects, the aspects concerning crackdowns by the police, customs authorities and the courts, and the economic, financial and criminological aspects, etc.;

26. Insists that, from the outset, it should provide for effective communication between its central data base and national data bases to make maximum use of existing collections of knowledge and to avoid duplication. Common analytical methods must be agreed with the Centre and with Member States for collecting drugs data; insists that one of the first priorities for the Drugs Monitoring Centre must be to examine the fundamentals of why people take drugs and what measures have succeeded best in preventing and alleviating the problem;

27. Takes the view that it is essential for multidisciplinary research that the Centre has at its disposal at all times the most recent information from the Member States on legal aspects, the allocation of responsibilities among the various levels of government, prevention policy and treatment, and practical information and statistics on trafficking and use, transmissible diseases, crime and safety;

28. Notes that the EMCDDA's is called on to play a central role in the implementation of the action plan and hopes that it will be provided with all the technical, human and financial resources which it needs in order to operate satisfactorily;

29. Considers it essential for the EMCDDA's annual reports, the three-year work programme and other documents drawn up by the governing body to be submitted in addition to the European Parliament;

30. Considers it essential for the workings of the EMCDDA to be transparent so that it is trusted by the general public, and calls for easy access by public bodies to the information gathered and the statistical data produced by the Centre;

as regards the Member States

31. Calls upon the 1996 Intergovernmental Conference to bring the fight against drugs within the remit of Community policy, so that it is no longer seriously hampered by division between the three pillars, compounded by further divisions of competence within the third pillar;
32. Requests the Member States concerned to implement into national law the EC Directive on chemicals and precursors without further delay, and to sign the UN convention on the manufacture and marketing of substances used in the illicit manufacture of narcotic and synthetic drugs;
33. Calls on those Member States which have not already done so, to introduce policies to reduce risks connected with drug use;
34. Proposes that, in addition to cooperation at European level, Member States also enter into an intensive dialogue and cooperate on a regional basis, at urban level and in border regions, in the context of which specific experience concerning drugs policy at regional level, in towns and cities and in border regions should serve as the basis for debate;
35. Proposes that a national drugs intelligence unit be set up in each EU country, wherever possible incorporated in, but as a distinct part of a National Criminal Intelligence Service, and in each country bordering with the EU, and that they be properly financed, and manned by trained staff;
36. Stresses the need to raise awareness and dialogue concerning the matter of arrest, trial and sentencing, and to make a serious effort to bring current practices closer together, whilst recognising that this has to remain a matter to be decided upon and implemented within each Member State;
37. Prompts the Member States to engage in more cooperation in the criminal justice field on drug-related crime, in particular with regard to extradition, and urges that cooperation at local level between police services, the judicial authorities and aid workers be encouraged;
38. Urges the Member States to devote more resources to their national programmes for the training of counsellors and to programmes for the rehabilitation of drug addicts within society, taking into account experiences at EU level and actively promoting the best methods of rehabilitation and the dissemination of information;
39. Urges that Member States consider improved ways in which to obtain and coordinate information from banks that will allow an effective trace to be put on transactions suspected to be linked to drug profits;

as regards producing countries

40. Asks for far better cooperation in the compilation of meaningful statistics on the areas given over to the seeding, growing and harvesting of opium, coca and cannabis crops using the latest satellite techniques backed up by systematic 'on the ground' surveys;
41. Stresses the importance of providing an alternative in supplier countries, so that growing crops for purposes of drug production is no longer a vital necessity for farmers, notably through joint actions under the common foreign and security policy or under cooperation agreements with third countries (Lomé Convention and development policy);
42. Hopes to receive from the Commission evaluations of its participation in UNDCP programmes and, in particular, to be regularly informed on the extent to which the people concerned in the growing countries are involved in the planning and implementation of drug-substitution programmes, as urged in the Commission's remarks on budget heading B7-5080;
43. Considers it important to promote alternative trading options for the drug-growing countries and urges the Commission to support 'fair trade' projects and imports from drug-growing countries so that more farmers may have an opportunity to grow crops other than drugs and market them at attractive prices;

Thursday, 15 June 1995

44. Welcomes the retention of the GSP in the agreements already drawn up and those still under negotiation, provided that it first undergoes accurate, systematic, independent periodic assessment which will reveal its actual effects on reducing the production of raw materials intended for the manufacture of drugs;
45. Believes that the GSP must be of direct benefit to impoverished farmers who have hitherto sought to make a living by producing raw materials for drugs, or are in danger of doing so, and wishes to be kept informed by the Commission of the percentage of the GSP for which the sectors referred to account;
46. Wishes to be informed by the Commission of the measures it intends to take in the Andean region and in the Central American countries to promote the growing of legal crops to which the GSP does not apply;
47. Considers it essential for future agreements with sensitive countries to be properly thought out and to involve extensive local dialogue, so as to ensure that they include new ways of encouraging crop substitution by means of support for the establishment of other activities in agriculture, trade and industry which are economically attractive to the local people;
48. Wishes to see a substantial change in the way money is expended on crop eradication and substitution; in this respect points to the relative failure of the United States and others to make headway in Peru and Bolivia and of the United Nations and others to progress in both South East Asia (Burma) and North West Asia (Afghanistan) and notes that the southern CIS states provide new and fertile ground for the growing of both opium poppy and cannabis;
49. Calls on the Commission to carry out a study of the rise in drug production associated with the increase in exports of cheap foodstuffs from the EU to the drug-growing countries and to inform it of any conclusions drawn from this study;
50. Points out that the elimination of crops by aerial methods can only be carried out with due regard to environmental safety and to the living conditions of the local population;
51. Points out that any cultivation of narcotic crops for the first time in new areas needs to be dealt with speedily and effectively as this has nothing to do with the 'traditional' livelihood of local farmers; insists that any trade agreements made by the EU with drug crop growing countries must take into account their willingness to reduce the areas under cultivation;
52. Considers that support should not be provided for crop eradication through the use of repressive measures;

as regards the financial implications

53. Considers that the drastic reductions of public financing in national budgets, especially in health care, render impossible any policy of care and prevention and stresses the need for a sufficient provision for the next five years in the European Union budget;
54. Demands an assessment of the efficacy of devoting scarce funds to eradication and crop substitution as compared to criminal intelligence and improved surveillance and detection work at the borders;
55. Asks for every assistance possible through the PHARE and other programmes to the countries of Central and Eastern Europe for devising their own drugs prevention policy and their own harm reduction strategy, as well as for bringing their own intelligence services and operational resources up to the mark;
56. Recommends greater cooperation between Member States and the United States in training and equipping customs and police in the countries of the former Soviet Union and, in particular, European participation in the new US-instigated Hungarian National Police Training Academy;

Thursday, 15 June 1995

57. Calls for the allocation of confiscated funds, in addition to the extra monies needed from the EU and national budgets, firstly to improve prevention policy and harm reduction programmes and secondly to provide better police and customs resources in the war against drugs traffickers;

58. Recommends that a conference should be arranged to involve Member States, the European Parliament, the European Commission and other relevant bodies, to discuss the present situation in the European Union on the basis of carefully compiled information with emphasis on demand reduction (including a study of the social reasons for drug-taking), as well as on an aid policy assessment;

59. Recommends that this conference encourage discussion and analysis of the results of the policies in force as laid down by the relevant 1961, 1971 and 1988 UN Conventions so as to permit a possible revision of those conventions;

60. Would like to see more programmes and proposals formulated for the purpose of prevention; stresses that as far as prevention of drug use is concerned, health care measures are not just a matter of care and treatment of the sick; on the contrary, the health promotion approach, which stems from the principle 'prevention is better than cure', is aimed at addressing problems at their source, i.e. encouraging individuals to adopt a responsible lifestyle and behaviour; therefore the primary focus of health promotion must be health-oriented rather than disease-oriented (COM(94)0202, pp. 4 and 5, paragraphs 7 and 8);

61. Stresses the important complementary and indispensable role of the family and of school in the fight against drugs in connection with preventive measures aimed at children and adolescents; there is a need to make parents and teachers fully aware of their educational responsibilities; one reason young people take drugs is a lack of a sense of purpose in their lives; moreover, education should tackle escapism at an early age and teach children to face up to problems;

62. Recognising the different aspects to the drugs problem, which results in a disparate number of budget lines, recommends that an annual report should be submitted by the Commission to the Civil Liberties Committee showing how monies have been expended on drugs action programmes and related activities and with what result;

*
* * *

63. Instructs its President to forward this resolution to the Council and the Commission, the governments and the parliaments of the Member States, and of the applicant states to the Union and to the governments of the other countries of Central and Eastern Europe, the Council of Europe and the United Nations.

Thursday, 18 January 1996

20. Believes that it is essential to increase humanitarian and food aid, as well as those projects directly linked to support for reforms leading to greater respect for the human, civil and political rights of Cubans, and the broadening of the sphere in which they operate, as well as the broadening of the free market economy and the work which the Cuban and European NGOs have been carrying out, in particular during the last few years, by regularizing the legal status of the NGOs working in Cuba in the interests of making their work more efficient;
21. Believes that humanitarian aid must be provided, wherever possible, through the NGOs belonging to Cuban civil society, preferably working in collaboration with NGOs established in Member States of the EU;
22. Believes that special attention should be paid to the development of Cuban civil society, supporting the work of NGOs and favouring their international contacts;
23. Reiterates its appeal to the United States not to implement measures designed to impose penalties on persons trading with Cuba, which in any case infringe international law and the standards laid down by the World Trade Organisation, and once again calls upon the United States authorities to end completely the economic embargo against Cuba;
24. Instructs its President to forward this resolution to the Commission, the Council, the governments of the Member States, the National Assembly of the Peoples Republic of Cuba, the President of the Cuban Council of State, the President of the Latin American Parliament, the President of the United States and the President of the Senate and Speaker of the House of Representatives of the US Congress.

6. Trafficking in human beings

A4-0326/95

Resolution on trafficking in human beings

The European Parliament,

- having regard to the United Nations Convention of 21 March 1950 for the suppression of the traffic in persons and of the exploitation of the prostitution of others,
- having regard to the United Nations Convention of 18 December 1979 on the elimination of all forms of discrimination against women,
- having regard to the UN General Assembly's Resolution 42/140 of 7 December 1987 on the rights and dignity of migrant workers,
- having regard to the United Nations Convention of 20 November 1989 on the rights of the child,
- having regard to the European Convention for the Protection of Human Rights and Fundamental Freedoms,
- having regard to the Council of Europe's Recommendation No R(91)11 of 9 September 1991 concerning sexual exploitation, pornography and prostitution of, and trafficking in, children and young adults,
- having regard to the Beijing Platform of Action,
- having regard to the recommendations of the Council of Justice and Home Affairs Ministers of 29 and 30 November 1993⁽¹⁾,
- having regard to its resolution of 11 June 1986 on violence against women⁽²⁾,
- having regard to its resolution of 14 April 1989 on the exploitation of prostitution and the traffic in human beings⁽³⁾,
- having regard to its resolution of 8 July 1992 on a European Charter of Rights of the Child⁽⁴⁾.

⁽¹⁾ Minutes of the meeting of the Council of Justice and Home Affairs Ministers of 29 and 30 November 1993.

⁽²⁾ OJ C 176, 14.7.1986, p. 73.

⁽³⁾ OJ C 120, 16.5.1989, p. 352.

⁽⁴⁾ OJ C 241, 21.9.1992, p. 67.

Thursday, 18 January 1996

- having regard to its resolution of 22 January 1993 on the setting up of Europol ⁽¹⁾,
 - having regard to its resolution of 16 September 1993 on trade in women ⁽²⁾,
 - having regard to its resolution of 17 December 1993 on pornography ⁽³⁾,
 - having regard to its resolution of 19 May 1995 on the Europol Convention ⁽⁴⁾,
 - having regard to Rule 148 of its Rules of Procedure,
 - having regard to the report of the Committee on Civil Liberties and Internal Affairs and the opinions of the Committee on Culture, Youth, Education and the Media and the Committee on Women's Rights (A4-326/95),
- A. whereas trafficking in human beings (men, women, children and young adults) is incompatible with human dignity and worth and constitutes a serious violation of human rights,
 - B. whereas trafficking in human beings is to a large extent the result of the imbalances in international economic relations, and whereas this is an issue which concerns both development policy and the policy of international cooperation with the developing countries and the countries of Central and Eastern Europe,
 - C. whereas trafficking in human beings has become a preferred area of activity for international organized crime, which exploits economic hardship, youthful inexperience and poverty with a cynical disregard for humanity for the purposes of prostitution, drug-dealing, illegal immigration and organized black labour,
 - D. having regard to the crucial need to protect human beings against any exploitation of their precarious social and economic circumstances or their inexperience for the purposes of clandestine employment in conditions of slavery, prostitution, pornography, any other form of sexual abuse or the trade in human organs,
 - E. whereas it is the duty of every society to ensure that all human beings are allowed to fulfil their potential and that their interests are respected by all,
 - F. whereas victims of trafficking are forced into such situations by a third party, acquiesce out of necessity and, in view of their illegal status, poverty, discrimination, dependency and indebtedness, are regularly subjected to blackmail and oppression,
 - G. whereas, in most cases, migrants who are victims of trafficking and who are brought to a country and employed either clandestinely or legally are subject to inhuman and degrading treatment and exploitation and, in flagrant violation of their human rights, find that their freedom is curtailed, they receive paltry wages and are forced to work long, irregular hours,
 - H. whereas a growing number of children and young adults are victims of trafficking mainly for the purposes of pornography industries and sex tourism,
 - I. whereas a growing number of European children are the victims of kidnapping by traffickers in human beings,
 - J. whereas the victims must be given the opportunity to free themselves from the environment of criminal oppression and dependency, through proper protection and specific measures to promote decent employment opportunities, access to education and culture and social rehabilitation,
 - K. whereas many victims of such trafficking face various problems when they return to their home country, such as the risk of being rejected by their families, being unable to find work, becoming social outcasts and being victimized,
 - L. whereas the violence practised against the victims of trafficking, particularly children and young adults, has particularly harmful effects on their physical and mental development,

⁽¹⁾ OJ C 42, 15.2.1993, p. 250.

⁽²⁾ OJ C 268, 4.10.1993, p. 141.

⁽³⁾ OJ C 20, 24.1.1994, p. 546.

⁽⁴⁾ OJ C 151, 19.6.1995, p. 376.

Thursday, 18 January 1996

- M. whereas the clandestine work carried out by migrants in degrading conditions is not only a flagrant violation of human rights but also a means whereby unscrupulous employers can achieve high profits owing to wage distortions which can lead to forms of unfair competition,
- N. whereas trafficking in human beings is a form of slavery linked to international organized crime; whereas action to combat this form of slavery must be targeted at those smuggling persons over borders, employers, pimps, brothel managers, the organizers of travel for the purposes of sex tourism and producers of pornographic material involving children, and not at those who are the victims of such slavery,
- O. whereas although the prevention, deterrence and possible prosecution of trafficking in human beings remain the responsibility of the Member States as part of their policing powers, the Union cannot afford to ignore this problem, particularly following the entry into force of the Schengen agreements,
- P. whereas the Community has legitimate responsibility in this sphere in view of the new framework resulting from the internal area without frontiers in which persons, goods, services and capital are theoretically entitled to freedom of movement,
- Q. whereas, unfortunately, Title VI of the Treaty of European Union, which concerns cooperation in judicial, customs, police and statistical matters, focuses mainly on intergovernmental activities and neglects the democratic control and dynamism which the European Parliament might bring to bear in this sphere,
- R. whereas Article K.2(1) of the Treaty on European Union explicitly refers to the European Convention for the Protection of Human Rights and Fundamental Freedoms, which stipulates in Article 3 that 'no one shall be subjected to torture or to inhuman or degrading treatment or punishment',
- S. whereas education, vocational training, health and consumer protection now come under the sphere of Community responsibility, and whereas the Community can capitalize on this in order to draw up proposals for action,
- T. whereas Europol is required to exchange information on international organized crime,
- U. whereas the offence of trafficking in women is not always clearly defined in national legislation or international conventions, thereby leading to confusion which makes it more difficult to fight these crimes,
- V. whereas the ministers of the Member States, meeting within the Trevi Group, instructed the Trevi 3 Group to look into police practices with regard to combating trafficking in human beings and in particular sexual exploitation through trafficking in children and women with a view to harmonizing such practices where appropriate and increasing their effectiveness,
- W. whereas the Council of Justice and Home Affairs Ministers of 29 and 30 November 1993 adopted recommendations on combating procuring by means of an organized system of information,
- X. whereas the Intergovernmental Conferences provide a unique opportunity to define and extend Community powers in spheres which threaten a person both physically and mentally, such as trafficking in human beings,
1. Takes the term 'trafficking in human beings' to mean the illegal action of someone who, directly or indirectly, encourages a citizen from a third country to enter or stay in another country in order to exploit that person by using deceit or any other form of coercion or by abusing that person's vulnerable situation or administrative status;
 2. Calls on the Commission to propose to the Council that the European Union accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms in order to strengthen the Community's jurisdiction in this sphere;
 3. Considers that international cooperation should be stepped up among both states and judicial and police institutions so that effective action can be taken to combat trafficking in human beings;

Thursday, 18 January 1996

4. Calls on the Member States to draw up specific guidelines for the police and the courts in order to facilitate active criminal investigations in the Member States;
5. Points out that, although trafficking in human beings is not one of the areas specifically mentioned in Article K.1 of Title VI of the Treaty on European Union, joint action should be taken immediately to combat this problem, in view of the interconnection between areas of responsibility referred to in this article, in particular points 2, 3, 5 and 9;
6. Calls for trafficking in human beings to be included, following the 1996 IGC, amongst those fields currently covered by Article K.1 of the TEU and for it to fall within the sphere of Community jurisdiction, inter alia by virtue of the European Parliament's monitoring and supervisory role;
7. Considers that a common policy on trafficking in human beings must be aimed at prevention, deterrence, prosecution and rehabilitation;

As regards external preventive measures

8. Considers it essential that the objectives of development aid policy should include aid for the victims or potential victims of the traffic in human beings;
9. Urges the Union to take account of the specific position of women and children in its relations with developing countries and the countries of Central and Eastern Europe;
10. Calls on the Member States to support prevention campaigns in the countries of origin and to focus on the opportunities, limitations and rights in the event of emigration;
11. Calls for the police bodies of the Member States to engage in institutionalized cooperation with the developing countries and the countries of Central and Eastern Europe to improve efforts to combat organized crime and identify more successfully those networks involved in the trafficking of human beings and the transit routes used;

As regards internal preventive measures

12. Calls on the Member States to carry out and publish surveys on the nature, scale, channels, transit routes and organization of the traffic in human beings, its links with organized crime and the scale of economic gains, with a view to promoting public awareness campaigns through appropriate use of the media;
13. Calls on the Member States to organize information and prevention campaigns aimed at clarifying the opportunities, limitations and rights in the event of emigration;
14. Welcomes the ILO and WHO initiatives to draw up standards for the informal economy and believes it is advisable to draw up legislation on unregulated work in the Union, too, in order to reduce the vulnerability and lack of rights of persons working in this sector, and to ensure access to health care, social services and insurance;

As regards deterrent measures

15. Calls on Member States to provide a clear definition of the concept of trafficking in human beings, and to identify trafficking as a violation of human rights and a serious crime;
16. Calls on Member States to provide a clear definition of the concept of sex tourism and to identify the cases to be deemed criminal offences, to supervise agencies who engage in prostitution tours and to enter into agreements with the authorities concerned;
17. Considers there should be greater controls over issuing residence and work permits to 'folk artists', dancers, au-pairs and chambermaids, as well as proper regulation of show-business agencies and marriage bureaux with specific contacts and information campaigns for the workers and persons involved, in order to clarify the rights and protection of potential victims;
18. Believes that granting immigrant women the right to residence permits distinct from those of their spouses and work permits for the territory of the Union is a means of helping to prevent the traffic in women;
19. Calls on the Member States to coordinate banking and fiscal supervision in order to combat money laundering of the proceeds of trafficking;

Thursday, 18 January 1996

As regards penal measures

20. Urges that cooperation between the Member States' police bodies, as provided for by the Europol Convention, should encompass all organized crime, including trafficking in human beings and child abductions;

21. Considers in this connection that there should be computerized exchanges of information between the police bodies of the signatory states on the identity of traffickers and on transnational networks trafficking in human beings as well as suitable training courses for police agents working at frontiers;

22. Calls on the Member States to include the explicit penalization of trafficking in human beings in their respective penal codes as soon as possible, and to impose tougher sentences if necessary; calls on the Commission to cooperate with the Member States in drawing up a definition of the offence so that fighting this crime can be tackled within the Union on a basis of sound cooperation and without any confusion over terms;

23. Calls for rules to be introduced on extra-territorial jurisdiction in order to allow the prosecution and punishment of individuals who have committed offences involving sexual exploitation of children and adolescents outside the Community territory;

24. Urges all the Member States to confiscate the earnings obtained through trafficking in human beings and the means of transport involved;

As regards measures to assist the victims

25. Calls on the Member States, in cases where exploiters are reported to the police, to take direct measures to ensure the safety and dignity of the victims by guaranteeing them the right to bring civil proceedings, a temporary residence permit for humanitarian reasons and protection for them during and after the trial where they are called upon to testify;

26. Calls on the Member States to grant the victims of trafficking in human beings social as well as legal assistance, and suggests the following specific measures in this respect:

- protection of victims from blackmail and revenge by setting up emergency phone services to provide them with counselling in their mother tongue,
- providing police and court translators and interpreters to assist the victims,
- refuges for victims to be established in the host countries;

27. Urges the Member States to allow the victims to remain on their territory in cases where repatriation could seriously endanger those persons' lives and make them vulnerable to further exploitation;

* * *

28. Calls on the Commission to assist the countries of origin in organizing support facilities for victims returning home, the central features of which should be confidentiality, education and training to encourage economic independence and social integration;

29. Calls on the Commission and the Member States to include in all bilateral or multilateral agreements with developing countries, the countries of Central and Eastern Europe and the less developed countries a specific clause establishing concerted measures to prevent and to combat the traffic in women;

30. Believes that NGOs which are working to combat trafficking in human beings should be supported by the governments and develop close cooperation with the authorities of the Member States in order to implement an active policy of detection, social integration and international cooperation between NGOs;

31. Calls on the Commission and the Member States to take action at an international level to draft a new UN convention to supersede the obsolete and ineffective Convention on the Suppression of Traffic in Persons and of the Prostitution of Others (1949); any new convention should focus on coercion and deception;

Thursday, 18 January 1996

32. Calls on the Commission and the Member States to urge the UN to appoint a special rapporteur for the traffic in human beings in its Commission on Human Rights;
33. Instructs its President to forward this resolution to the Commission, the Council and the governments of the Member States.
-

**Council Decision of 23 November 1995 on
publication in the Official Journal of the European
Communities of acts adopted by the Council under
Title VI of the Treaty on European Union as
published in OJ C 274, 19.09.1996.**

Pages 315-373 have been deleted from this document. The contents are available on AEI under the title Acts Adopted under Title VI of the Treaty on European Union, <http://aei.pitt.edu/1739>.

Official Journal

of the European Communities

English edition

Information and Notices

<u>Notice No</u>	Contents	Page
<i>Acts adopted pursuant to Title VI of the Treaty on European Union</i>		
96/C 319/01	Council Resolution of 14 October 1996 laying down the priorities for cooperation in the field of justice and home affairs for the period from 1 July 1996 to 30 June 1998	1

EN

(Acts adopted pursuant to Title VI of the Treaty on European Union)

COUNCIL RESOLUTION

of 14 October 1996

laying down the priorities for cooperation in the field of justice and home affairs for the period from 1 July 1996 to 30 June 1998

(96/C 319/01)

THE COUNCIL OF THE EUROPEAN UNION,

in response to the request of the European Council that it organize its work on cooperation in the fields of justice and home affairs, provided for in Title VI of the Treaty on European Union, by determining the activities which should be carried out as a matter of priority in pursuit of the objectives fixed at the Madrid Summit on 15 and 16 December 1995,

reiterating its ambition to promote liberty, security and justice in the European Union, in accordance with the principles of the rule of law, by developing close cooperation between the Member States in the fields of justice and home affairs,

HEREBY ADOPTS THIS RESOLUTION:

1. The Council intends to pursue the objectives defined by the European Council concentrating priority on the following topics in the period from 1 July 1996 to 30 June 1998:

1. Combating terrorism:

- (a) strengthening cooperation between the Member States;
- (b) updating the document on the terrorist threat;
- (c) drawing up a list of counter-terrorist centres of excellence;

2. Combating organized crime and drugs:

2.1. police and customs cooperation:

- (a) implementation of the Europol Convention (implementing regulations, computer system) and monitoring of the Europol Drugs Unit (EDU);
- (b) police training, in particular through cooperation between police training schools;
- (c) strengthened technical cooperation, in particular with regard to interception of communications, cooperation between forensic laboratories, cooperation between national criminal intelligence services;
- (d) update of the situation report on organized crime and implementation of its recommendations;
- (e) draft 'Naples II' Convention;
- (f) strategies for external frontier control;
- (g) combating counterfeiting and illegal trade in works of art;

2.2 drug control:

- (a) implementation of the report by the Group of experts on drugs adopted by the European Council in Madrid on 15 and 16 December 1995 at the judicial, police and customs levels, particularly in the field of supply reduction and international cooperation;

- (b) mechanism to combat drug abuse in Latin America, including the Caribbean;
- (c) examination of the extent to which the harmonization of Member States' laws could contribute towards reducing the consumption and supply of drugs in the European Union;
3. Improving judicial cooperation:
- 3.1. *in civil matters:*
- (a) draft Convention on the services of judicial and extrajudicial documents in civil or commercial matters;
- (b) draft 'Brussels II' Convention (on matrimonial matters and custody of children);
- (c) launching of discussions on the necessity and possibility of drawing up a European enforcement order and a convention on the law applicable to extracontractual obligations;
- 3.2. *in criminal matters:*
- (a) draft Convention on extradition;
- (b) draft Convention on mutual assistance in criminal matters;
- (c) analysis and adaptation of existing instruments concerning other forms of judicial cooperation;
- (d) draft Convention on the enforcement of driving disqualifications;
- (e) combating counterfeiting;
- 3.3. *in civil and criminal matters:*
- implementation of the joint action concerning the liaison magistrates and consideration of the desirability of setting up a network of contact magistrates;
4. Improvement of cooperation with regard to immigration and asylum:
- (a) implementation of the Dublin Convention;
- (b) harmonization of national procedures for granting the right to asylum;
- (c) harmonization of conditions for the reception of asylum applicants;
- (d) development of the Eurodac system (Convention and technical specifications);
- (e) examination of the legal status of third-country nationals residing legally in the territory of the Member States;
- (f) examination of the problems of temporary protection and burden-sharing;
- (g) examination of forms of alternative protection (*de facto* protection and humanitarian residence permit);
- (h) strengthening measures to combat illegal immigration, especially illegal immigration networks, and illegal employment;
- (i) improving cooperation with countries of origin;
- (j) improving cooperation regarding the expulsion of illegal immigrants; problems of readmission;
- (k) false documents: development of a harmonized image filing and transmission system; practical cooperation;
- (l) examination of the problem of family reunification;
5. Stepping up checks on persons at external frontiers:
- (a) draft Convention on the crossing of external frontiers and implementing measures;
- (b) draft Convention on the European Information System (EIS);
- (c) increased operational cooperation between authorities carrying out checks at external frontiers;
- (d) visas: mutual recognition of visas; manual and other implementing measures; updating of relevant regulations;
6. Combating racism and xenophobia:
- (a) assessment of the recommendations of the consultative committee on racism and xenophobia;
- (b) continuation of work, both at judicial and administrative level, on the monitoring of joint action against racism and xenophobia and public order;

7. **Combating corruption and fraud affecting the Community's financial interests:**
- (a) draft second Protocol to the Convention on the protection of the Community's financial interests;
 - (b) draft Convention on corruption;
8. **Horizontal actions:**
- (a) preventing crime;
 - (b) combating trafficking in human beings.

II. In support of the priority activities listed in point I, the Council will encourage the exchange of officials and magistrates between Member States and — if need be by granting Community financing — the organization of seminars and conferences and the establishment of training programmes.

The Council will endeavour, wherever possible, to coordinate the positions of Member States in international organizations and at international conferences when they deal with a topic connected with the priorities defined in point I.

Finally, the Council will carry out periodic checks of the implementation by the Member States of the binding instruments adopted under Title VI of the Treaty on European Union.

III. The Council's activities in respect of cooperation in the fields of justice and home affairs with third countries will be covered by one or more separate work programmes.

With regard to countries involved in a structured dialogue with the European Union, cooperation will focus particularly on combating organized crime and drug trafficking.

IV. Without prejudice to the right of initiative of Member States and the Commission as provided for in Article K.3 (2) of the Treaty on European Union, the Council, acting on a proposal from the Committee set up by Article K.4 (1) of that Treaty, will confer on a programme, in principle at the beginning of each Presidency and in any event once a year, in order to lay down the priorities for the following two years. On that occasion, the Council will decide which activities must be removed from the list of priorities, either because they have already been successfully completed, or because achieving them in the short term is impossible or is no longer a priority, and which other activities must be regarded as having priority and be included in the programme.

V. This resolution and the Annex thereto will be sent to the European Parliament and published in the Official Journal.

ANNEX

Subject	Instrument/Action	Completion
1. Terrorism		
(a) strengthening of cooperation	adoption of measures	ongoing
(b) threat document	continual updating	ongoing
(c) directory of centres of special competence	practical implementation	ongoing
2. Organized crime, drugs		
<i>2.1 Police and customs cooperation</i>		
(a) implementation of Europol and monitoring of EDU activities	implementing regulations and completion of IT network	ongoing
(b) police training and cooperation between training schools	agreement between schools, creation of a cooperation structure, agreement on programmes for courses and seminars	long term
(c) technical cooperation		
— interception	implementation of Council Resolutions and Seminar Quantico 4/Satellite communication (Europol 90, 1995)	for the record
— cooperation between forensic laboratories	practical cooperation	for the record
— cooperation between national crime intelligence services	definition of technical standards practical cooperation	ongoing
— radio communication	follow-up to discussions on new technology	ongoing
— public order cooperation	review of existing police cooperation experts' meeting	new
(d) report on organized crime	updating	ongoing
(e) Naples II	new Convention	ongoing
(f) strategies for checks at external borders	practical cooperation	ongoing
(g) combating counterfeiting and trafficking in works of art	practical cooperation	ongoing
<i>2.2 Drug control</i>		
(a) reports from the experts on drugs	implementation at the national, police and customs levels	ongoing

26. 10. 96

EN

Official Journal of the European Communities

No C 319/5

Subject	Instrument Action	Completion
b) fight against drugs in Latin America including the Caribbean	setting up a mechanism and implementing the recommendations	ongoing
3. Judicial cooperation		
<i>3.1. Judicial cooperation in civil matters</i>		
(a) transmission of judicial and extrajudicial documents in civil or commercial matters	draft Convention	for the record
(b) matrimonial matters and custody of children (Brussels II)	draft Convention	for the record
(c) European enforcement order and the law applicable to extra contractual obligations	draft Convention	examination of advisability of drawing up a Convention
<i>3.2. Judicial cooperation in criminal matters</i>		
(a) extradition	draft Convention and explanatory report	for the record
(b) mutual assistance	draft Convention	ongoing
(c) other forms of cooperation	analysis and adaptation of existing instruments	initiation of proceedings
(d) driving disqualification	draft Convention	for the record
<i>3.3. Judicial cooperation in civil and criminal matters</i>		
(a) liaison magistrates	practical cooperation	ongoing
(b) contact magistrates	practical cooperation	initiation of proceedings
4. Immigration and asylum		
(a) Dublin Convention	practical cooperation	on entry into force
(b) harmonization of national procedures for granting right of asylum		initiation of proceedings
(c) harmonization of conditions for the reception of asylum applicants		initiation of proceedings
(d) Eurodac	draft Convention	ongoing
(e) legal status of third-country nationals residing legally in the territory of the European Union	examination	initiation of proceedings
(f) temporary protection and burden-sharing	examination	ongoing
(g) <i>de facto</i> protection and humanitarian residence permit	examination	initiation of proceedings

Subject	Instrument/Action	Completion
(h) stepping up the fight against illegal immigration and employment		
(t) cooperation with countries of origin	practical cooperation	ongoing
(p) expulsion of illegal immigrants; readmission problems	practical cooperation	several Presidencies
(k) false documents	practical cooperation	several Presidencies
(l) problems of family reunification	examination	initiation of proceedings
5. External frontiers		
(a) crossing of external frontiers	— draft Convention — practical cooperation	ongoing
(b) European Information System	draft Convention	ongoing
(c) visas	updating of regulations implementing measures	ongoing
6. Racism and xenophobia		
(a) recommendation of the consultative committee	examination	ongoing
(b) judicial and police measures	examination	ongoing
7. Combating corruption and fraud affecting the Community's financial interests		
(a) protection of financial interests (PFI)	draft Protocol to the PFI Convention	for the record
(b) corruption	draft Convention	for the record
8. Horizontal actions		
(a) crime prevention	examination	initiation of proceedings
(b) combating trafficking in human beings	— examination — practical cooperation	ongoing

Official Journal

of the European Communities

ISSN 0378-6986

C 329

Volume 39

4 November 1996

English edition

Information and Notices

Notice No

Contents

Acts adopted under Title VI of the Treaty on European Union

96/C 329/01

Council Resolution of 17 January 1995 on the lawful interception of telecommunications 1

4. 11. 96

EN

Official Journal of the European Communities

No C 329/1

(Acts adopted under Title VI of the Treaty on European Union)

COUNCIL RESOLUTION

of 17 January 1995

on the lawful interception of telecommunications

(96/C 329/01)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Union, and in particular to Articles K.1 (9) and K.2 (2) thereof,

Reaffirming the need, when implementing telecommunications interception measures, to observe the right of individuals to respect for their privacy as enshrined in the territorially applicable national law,

Aware of the fact that observing that right comes up against specific legal and technical difficulties in view of technological developments,

Determined to identify and overcome these difficulties in implementing the requirements set out in the Annex while observing human rights and the principles of data protection,

Whereas in the laws of the Member States possibilities are provided for restricting the secrecy of communications and, under certain circumstances, intercepting telecommunications;

Whereas the legally authorized interception of telecommunications is an important tool for the protection of national interest, in particular national security and the investigation of serious crime;

Whereas interception may only be effected insofar as the necessary technical provisions have been made;

Whereas in accordance with a decision by the Trevi Ministers in December 1991 a study should be made of the effects of legal, technical and market developments within the telecommunications sector on the different interception possibilities and of what action should be taken to counter the problems that have become apparent,

HAS ADOPTED THIS RESOLUTION:

1. The Council notes that the requirements of Member States to enable them to conduct the lawful interception of telecommunications, annexed to this Resolution ('the Requirements'), constitute an important summary of the needs of the competent authorities for the technical implementation of legally authorized interception in modern telecommunications systems.
2. The Council considers that the aforementioned Requirements should be taken into account in the definition and implementation of measures which may affect the legally authorized interception of telecommunications and requests Member States to call upon the Ministers responsible for telecommunications to support this view and to cooperate with the Ministers responsible for Justice and Home Affairs with the aim of implementing the Requirements in relation to network operators and service providers.

ANNEX

REQUIREMENTS

This section presents the Requirements of law enforcement agencies relating to the lawful interception of telecommunications. These requirements are subject to national law and should be interpreted in accordance with applicable national policies.

Terms are defined in the attached glossary.

1. Law enforcement agencies require access to the entire telecommunications transmitted, or caused to be transmitted, to and from the number or other identifier of the target service used by the interception subject. Law enforcement agencies also require access to the call-associated data that are generated to process the call.
 - 1.1. Law enforcement agencies require access to all interception subjects operating temporarily or permanently within a telecommunications system.
 - 1.2. Law enforcement agencies require access in cases where the interception subject may be using features to divert calls to other telecommunications services or terminal equipment, including calls that traverse more than one network or are processed by more than one network operator/service provider before completing.
 - 1.3. Law enforcement agencies require that the telecommunications to and from a target service be provided to the exclusion of any telecommunications that do not fall within the scope of the interception authorization.
 - 1.4. Law enforcement agencies require access to call associated data such as:
 - 1.4.1. signalling of access ready status;
 - 1.4.2. called party number for outgoing connections even if there is no successful connection established;
 - 1.4.3. calling party number for incoming connections even if there is no successful connection established;
 - 1.4.4. all signals emitted by the target, including post-connection dialled signals emitted to activate features such as conference calling and call transfer;
 - 1.4.5. beginning, end and duration of the connection;
 - 1.4.6. actual destination and intermediate directory numbers if call has been diverted.
 - 1.5. Law enforcement agencies require information on the most accurate geographical location known to the network for mobile subscribers.
 - 1.6. Law enforcement agencies require data on the specific services used by the interception subject and the technical parameters for those types of communication.
2. Law enforcement agencies require a real-time, fulltime monitoring capability for the interception of telecommunications. Call associated data should also be provided in real-time. If call associated data cannot be made available in real-time, law enforcement agencies require the data to be available as soon as possible upon call termination.

Law enforcement agencies require network operators/service providers to maintain one or several interfaces to which the intercepted communications can be transmitted to the law enforcement intercepting radios. These interfaces have to be commonly agreed on to intercept all calls.

- and the network operators/service providers. Other issues associated with these interfaces will be handled according to accepted practices in individual countries.
- 3.1. Law enforcement agencies require network operators/service providers to provide call associated data and call content from the target service in a way that allows for the accurate correlation of call associated data with call content.
 - 3.2. Law enforcement agencies require that the format for transmitting the intercepted communications to the monitoring facility be a generally available format. This format will be agreed upon on an individual country basis.
 - 3.3. If network operators/service providers initiate encoding, compression or encryption of telecommunications traffic, law enforcement agencies require the network operators/service providers to provide intercepted communications en clair.
 - 3.4. Law enforcement agencies require network operators/service providers to be able to transmit the intercepted communications to the law enforcement monitoring facility via fixed or switched connections.
 - 3.5. Law enforcement agencies require that the transmission of the intercepted communications to the monitoring facility meet applicable security requirements.
 4. Law enforcement agencies require interceptions to be implemented so that neither the interception target nor any other unauthorized person is aware of any changes made to fulfil the interception order. In particular, the operation of the target service must appear unchanged to the interception subject.
 5. Law enforcement agencies require the interception to be designed and implemented to preclude unauthorized or improper use and to safeguard the information related to the interception.
 - 5.1. Law enforcement agencies require network operators/service providers to protect information on which and how many interceptions are being or have been performed, and not disclose information on how interceptions are carried out.
 - 5.2. Law enforcement agencies require network operators/service providers to ensure that intercepted communications are only transmitted to the monitoring agency specified in the interception authorization.
 - 5.3. According to national regulations, network operators/service providers could be obliged to maintain an adequately protected record of activations of interceptions.
 6. Based on a lawful inquiry and before implementation of the interception, law enforcement agencies require: (1) the interception subject's identity, service number or other distinctive identifier; (2) information on the services and features of the telecommunications system used by the interception subject and delivered by network operators/service providers; and (3) information on the technical parameters of the transmission to the law enforcement monitoring facility.
 7. During the interception, law enforcement agencies may require information and/or assistance from the network operators/service providers to ensure that the communications acquired at the interception interface are those communications associated with the target service. The type of information and/or assistance required will vary according to the accepted practices in individual countries.
 8. Law enforcement agencies require network operators/service providers to make provisions for implementing a number of simultaneous intercepts. Multiple interceptions may be required for a single target service to allow monitoring by more than one law enforcement agency. In this case, network operators/service providers should take precautions to safeguard the identities of the

monitoring agencies and ensure the confidentiality of the investigations. The maximum number of simultaneous interceptions for a given subscriber population will be in accordance with national requirements.

9. Law enforcement agencies require network operators/service providers to implement interceptions as quickly as possible (in urgent cases within a few hours or minutes). The response requirements of law enforcement agencies will vary by country and by the type of target service to be intercepted.
10. For the duration of the interception, law enforcement agencies require that the reliability of the services supporting the interception at least equals the reliability of the target services provided to the interception subject. Law enforcement agencies require the quality of service of the intercepted transmissions forwarded to the monitoring facility to comply with the performance standards of the network operators/service providers.

GLOSSARY

Access	The technical capability to interface with a communications facility, such as a communications line or switch, so that a law enforcement agency can acquire and monitor communications and call associated data carried on the facility.
Call	Any connection (fixed or temporary) capable of transferring information between two or more users of a telecommunications system.
Call associated data	Signalling information passing between a target service and the network or another user. Includes signalling information used to establish the call and to control its progress (e.g. call hold, call handover). Call associated data also includes information about the call that is available to the network operator/service provider (e.g. duration of connection).
Interception	As used here, the statutory-based action of providing access and delivery of a subject's telecommunications and call associated data to law enforcement agencies.
Interception interface	The physical location within the network operator's/service provider's telecommunications facilities where access to the intercepted communications or call associated data is provided. The interception interface is not necessarily a single, fixed point.
Interception order	An order placed on a network operator/service provider for assisting a law enforcement agency with a lawfully authorized telecommunications interception.
Interception subject	Person or persons identified in the lawful authorization and whose incoming and outgoing communications are to be intercepted and monitored.
Law enforcement agency	A service authorized by law to carry out telecommunications interceptions.
Law enforcement monitoring facility	A law enforcement facility designated as the transmission destination for the intercepted communications and call associated data of a particular interception subject. The site where monitoring/recording equipment is located.
Lawful authorization	Permission granted to a law enforcement agency under certain conditions to intercept specified telecommunications. Typically this refers to an order or warrant issued by a legally authorized body.
Network operator/service provider	<p>— <i>network operator</i>: the operator of a public telecommunications infrastructure which permits the conveyance of signals between defined network termination points by wire, by microwave, by optical means or by other electromagnetic means;</p> <p>— <i>service provider</i>: the natural or legal person providing (a) public telecommunications service(s) whose provision consists wholly or partly in the transmission and routing of signals on a telecommunications network.</p>
Quality of service	The quality specification of a communications channel, system, virtual channel, computer-communications session, etc. Quality of service may be measured, for example, in terms of signal-to-noise ratio, bit error rate, message throughput rate or call blocking probability.

Reliability	The probability that a system or service will perform in a satisfactory manner for a given period of time when used under specified operating conditions.
Roaming	The ability of subscribers of mobile telecommunications services to place, maintain, and receive calls when they are located outside their designated home serving area.
Target service	A service associated with an interception subject and usually specified in a lawful authorization for interception.
Telecommunications	Any transfer of signs, signals, writing, images, sounds, data or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic or photooptical system.

Official Journal

of the European Communities

ISSN 0378-6978

L 287

Volume 39

8 November 1996

English edition

Legislation

Contents

Acts adopted pursuant to Title V of the Treaty on European Union

96/635/CFSP:

- ★ Common position of 28 October 1996 defined by the Council on the basis of Article J.2 of the Treaty on European Union, on Burma/Myanmar 1

Acts adopted pursuant to Title VI of the Treaty on European Union

96/636/JHA:

- ★ Joint action of 28 October 1996 adopted by the Council on the basis of Article K.3 of the Treaty on European Union, on a programme of incentives and exchanges for legal practitioners ('Grotius') 3

96/637/JHA:

- ★ Joint action of 28 October 1996 adopted by the Council on the basis of Article K.3 of the Treaty on European Union introducing a programme of training, exchanges and cooperation in the field of identity documents ('Sherlock') 7

EN

Acts whose titles are printed in light type are those relating to day-to-day management of agricultural matters, and are generally valid for a limited period.

The titles of all other Acts are printed in bold type and preceded by an asterisk.

(Acts adopted pursuant to Title V of the Treaty on European Union)

COMMON POSITION

of 28 October 1996

defined by the Council on the basis of Article J.2 of the Treaty on European Union, on
Burma/Myanmar

(96/635/CFSP)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article J.2 thereof,

HAS DEFINED THE FOLLOWING COMMON POSITION:

1. The European Union, considering the recent discussions with Burma/Myanmar at meetings in Jakarta and New York, is disappointed at the unwillingness of the State Law and Order Restoration Council (SLoRC) to enter into a meaningful dialogue with it. The European Union reaffirms its determination to resume such dialogue at any time.

2. The European Union is concerned at the absence of progress towards democratisation and at the continuing violation of human rights in Burma/Myanmar. It deplores, in particular, the practice of torture, summary and arbitrary executions, forced labour, abuse of women, political arrests, forced displacement of the population and restrictions on the fundamental rights of freedom of speech, movement and assembly. It condemns the detentions in May and September 1996 of members and supporters of the National League for Democracy (NLD). It calls for the immediate and unconditional release of all detained political prisoners. The NLD and other legitimate political parties, including those from ethnic minorities, should be allowed to pursue freely their normal activities. It calls on the SLoRC to enter into meaningful dialogue with pro-democracy groups with a view to bringing about national reconciliation.

3. The European Union recalls its great concern at the failure of the SLoRC to respect the results of the May 1990 elections and the subsequent maintenance of the military rule. It notes that the military regime has yet to demonstrate convincingly its intention to establish civilian democratic rule, within a credible time-frame. In addition, the European Union notes the failure of the SLoRC to demonstrate any willingness to respond to the

concerns of the United Nations General Assembly and the European Union.

4. The European Union recalls that it has already requested the Special Working Group on arbitrary detention and imprisonment to visit Burma/Myanmar, the UN High Commissioner for human rights to take action against Burma/Myanmar, and the Special Rapporteur on Burma/Myanmar to investigate the circumstances leading up to, and surrounding, the death of Mr James Leander Nichols.

5. With a view to promoting progress towards democratisation and securing the immediate and unconditional release of detained political prisoners, the European Union:

(a) reaffirms the following measures already adopted:

(i) expulsion of all military personnel attached to the diplomatic representations of Burma/Myanmar in Member States of the European Union and withdrawal of all military personnel attached to diplomatic representations of the Member States of the European Union in Burma/Myanmar;

(ii) an embargo on arms, munitions and military equipment⁽¹⁾ and suspension of non humanitarian aid or development programmes. Exceptions may be made for projects and programmes in support of human rights and democracy as well as those concentrating on poverty alleviation and, in particular, the provision of basic needs for the poorest section of the population, in the context of decentralized cooperation through local civilian authorities and Non-Governmental Organisations;

⁽¹⁾ The aforementioned embargo covers weapons designed to kill and their ammunition, weapon platforms, non-weapon platforms and ancillary equipment. The embargo also covers spare parts, repairs, maintenance and transfer of military technology. Contracts entered into prior to the date of entry into force of the embargo are not affected by this common position.

(b) introduces the following, additional measures:

- (i) ban on entry visas for senior members of the SLoRC and their families;
- (ii) ban on entry visas for senior members of the military or the security forces who formulate, implement or benefit from policies that impede Burma/Myanmar's transition to democracy, and their families; and
- (iii) suspension of high-level bilateral governmental (Ministers and Officials at the level of political director and above) visits to Burma/Myanmar.

In the case of a substantial improvement of the overall situation in Burma/Myanmar, not only the suspension of the aforementioned measures, but also the gradual resumption of cooperation with Burma/Myanmar will be considered, after careful assessment of developments by the Council.

7. This Common Position shall take effect on 29 October 1996 for a renewable six months period.

8. This Common Position shall be published in the Official Journal.

Done at Luxembourg, 28 October 1996.

6. The implementation of this common position will be monitored by the Council, to which the Presidency and the Commission will regularly report, and will be reviewed in the light of developments in Burma/Myanmar. Further measures may need to be considered.

For the Council
The President
 D. SPRING

(Acts adopted pursuant to Title VI of the Treaty on European Union)

JOINT ACTION

of 28 October 1996

adopted by the Council on the basis of Article K.3 of the Treaty on European Union, on a programme of incentives and exchanges for legal practitioners ('Grotius')

(96/636/JHA)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Articles K.3 (2) (b) and K.8 (2) thereof,

Whereas the Member States consider the strengthening of judicial cooperation to be a matter of common interest;

Whereas setting up a framework for projects of training, information, studies and exchanges for legal practitioners will contribute to improving the mutual understanding of legal and judicial systems of the Member States, to highlighting their points of convergence and to lowering the barriers to judicial cooperation between Member States;

Whereas these objectives can be more effectively realized at European Union level than at the level of each Member State, because of the expected economies of scale and the cumulative effects of the projects envisaged;

Whereas this joint action is without prejudice to the Community's powers in the field of vocational training and does not therefore adversely affect the Community measures taken to implement its policy in that field, and, in particular, the Leonardo da Vinci Programme;

Whereas this joint action does not affect the existing rules of procedure in the field of judicial cooperation,

HAS ADOPTED THE FOLLOWING JOINT ACTION:

Article 1

1. A programme for legal practitioners, to be known as 'Grotius', is hereby established for the period 1996—2000, in order to foster mutual knowledge of

legal and judicial systems and to facilitate judicial cooperation between Member States.

2. For the purposes of this joint action, 'legal practitioners' means judges (including examining magistrates), prosecutors, advocates, solicitors, academic and scientific personnel, ministry officials, criminal investigation officers, court officers, bailiffs, court interpreters and other professionals associated with the judiciary.

3. The programme shall comprise the following:

- training,
- exchange and work-experience programmes,
- organization of meetings,
- studies and research,
- distribution of information.

Article 2

The financial reference amount for the implementation of this programme for the period from 1996 to 2000 shall be ECU 8,8 million.

The annual appropriations shall be authorized by the budgetary authority within the limits of the financial perspective.

Article 3

Projects with the following objectives may be considered under 'training':

- fostering of foreign language knowledge, in particular a working knowledge of legal language,
- knowledge of the legal institutions and procedures of the other Member States, and how they function,
- exchange of experience between those responsible for the training of legal practitioners, and between institutions responsible for basic training and those responsible for continuing training,

- preparation of teaching modules for training projects, of exchanges and internships, the conferences, or of seminars organized as part of the implementation of the programme.

Article 4

Projects with the following objectives may be considered under 'exchange and placement programmes for training purposes':

- organization of work experience of limited duration in the legal institutions or with legal practitioners in Member States other than that of origin, in the Court of Justice of the European Communities, or in the Court of First Instance as well as in the European Court of Human Rights,
- organization of visits to legal institutions or to legal practitioners in a number of other Member States on specific themes or in the Court of Justice of the European Communities, in the Court of First Instance as well as in the European Court of Human Rights.

Article 5

Projects with the following objectives may be considered under 'organization of meetings':

- organization of bilateral or European conferences on legal topics of general interest,
- organization of multidisciplinary conferences on topical or new legal subjects relating to judicial cooperation,
- organization of seminars based around case studies on sentencing, in the course of which judges from different Member States deliver a verdict on the same court case.

Article 6

Projects with the following objectives may be considered under 'studies and research':

- preparatory analysis of subjects chosen for projects to be implemented within the framework of the programme,
- analysis of reports on work experience or meetings organized within the framework of the programme,
- coordination of research on topics relating to judicial cooperation.

Article 7

Projects with the following objectives may be considered under 'distribution of information':

- hard-copy or on-line distribution of information on legislative amendments or draft reforms, in the original or in translation,
- dissemination of information on projects under Articles 3, 4 and 5, the results of meetings under Article 5 or the findings of research carried out under Article 6 and the application of this research,
- creation of databases and/or documentation networks including lists of articles, publications, studies and legislation in fields relating to judicial cooperation.

Article 8

1. Projects financed by the Community must be of demonstrable European interest and involve more than one Member State.
2. Projects may be managed by national and non-governmental organizations, and in particular legal and judicial training establishments and research centres.
3. The selection process projects for which finance is requested shall have regard, *inter alia*, to:

- the extent to which the subjects covered conform with work that is already in progress or planned for the future under the Council's action programmes in fields relating to judicial cooperation,
- the contribution to the elaboration or implementation of instruments provided for under Title VI of the Treaty,
- the extent to which the different projects complement each other,
- the range of professions to which they are addressed,
- the quality of the institution responsible,
- the operational and practical nature of the projects,
- the degree of preparation of the participants,
- the possibility of using the results of the project to make further progress in judicial cooperation

4. These projects may associate practitioners from the States which have applied for membership where this would contribute to their preparation for accession or other non-member countries where this would be useful.

Article 9

The financing decisions and the contracts arising from them shall provide for monitoring and financial control by the Commission and audits by the Court of Auditors.

Article 10

1. All types of expenditure which are directly chargeable to the implementation of the project and which have been committed within a contractually agreed period shall be eligible.
2. The proportion of financial support from the Community budget shall not exceed 80% of the cost of the project.
3. Translation and interpreting costs, computing costs, and expenditure on durables or consumables shall not be taken into consideration unless they are essential for the realization of the project, and shall only be financed up to a limit of 50% of the grant or 80% in cases where the nature of the project makes them indispensable.
4. Expenditure relating to premises, collective facilities, and the salaries of officials of the State and public bodies shall be eligible only if it corresponds to postings and tasks which have no national purpose or function but are specifically connected with the implementation of the project.

Article 11

1. The Commission shall be responsible for carrying out the measures provided for in this joint action and shall adopt detailed rules for its implementation, including the criteria for the eligibility of costs.
2. It shall draw up each year, with the assistance of experts from the relevant professional circles, the draft annual programme implementing this joint action in terms of the thematic priorities and the distribution of available appropriations between fields of activity.
3. It shall undertake each year an assessment of the measures implementing the programme for the previous year.

Article 12

1. The Commission shall be assisted by a Committee consisting of one representative from each Member State and chaired by the Commission.
2. The Commission shall submit to the Committee the draft annual programme, including a proposal for the distribution of available appropriations between the fields of activity and proposals for implementing rules, and for project assessment. The opinion shall be delivered by the

Committee acting unanimously within a period of two months. This period may be reduced by the Chairman for reasons of urgency. The Chairman shall not vote.

If a favourable opinion is not delivered within the time limit, the Commission shall either withdraw its proposal or submit a proposal to the Council which shall take a decision unanimously within two months.

Article 13

1. From the second financial year onwards, projects for which financing is requested shall be submitted to the Commission for scrutiny before 31 March of the financial year to which they are to be charged.

2. The Commission shall examine the projects that are submitted to it with the assistance of the experts referred to in Article 11 (2).

3. Where the financing requested is less than ECU 50 000, the representative of the Commission shall submit a draft to the Committee referred to in Article 12 (1). The Committee, acting by the majority provided for in the second subparagraph of Article K.4 (3) of the Treaty, shall deliver its opinion on this draft within a time limit which the Chairman may lay down according to the urgency of the matter. The Chairman shall not vote.

The opinion shall be recorded in the minutes; furthermore, each Member State shall have the right to ask that its position be recorded in the minutes.

The Commission shall take full account of the opinion delivered by the Committee. It shall inform the Committee of how it has done so.

4. Where the financing requested exceeds ECU 50 000, the Commission shall submit to the Committee referred to in Article 12 (1) a list of the projects submitted to it under the annual programme. The Commission shall indicate the projects it selects and shall give reasons for its selection. The Committee, acting by the majority provided for in the second subparagraph of Article K.4 (3) of the Treaty, shall deliver its opinion on the various projects within a period of two months. The Chairman shall not vote. If a favourable opinion is not delivered within the time limit, the Commission shall either withdraw the project(s) concerned or submit it (them), with any opinion from the Committee, to the Council which, acting by the majority provided for in the second subparagraph of Article K.4 (3) of the Treaty, shall take a decision within two months.

Article 14

1. Measures incorporated in the programme and financed by the general budget of the European Communities shall be managed by the Commission in conformity with the Financial Regulation of 21 December 1977 applicable to the general budget of the European Communities⁽¹⁾.

2. When presenting the financing proposals referred to in Article 13 and the assessments provided for by Article 11, the Commission shall take account of the principles of sound financial management and in particular of economy and cost-effectiveness as required by Article 2 of the Financial Regulation.

Article 15

Each year the Commission shall report to the European Parliament and the Council on the implementation of the

programme. The first report shall be presented at the end of the 1996 budgetary year.

Article 16

This Joint Action shall enter into force on the day of its adoption.

It shall be applicable for a period of five years, at the end of which it may be extended.

It shall be published in the Official Journal.

Done at Luxembourg, 28 October 1996.

For the Council
The President
D. SPRING

⁽¹⁾ OJ No L 350, 31. 12. 1977, p. 1. Regulation as last amended by Regulation (EEC) No 2335/95 (OJ No L 240, 7. 10. 1995, p. 12).

JOINT ACTION

of 28 October 1996

adopted by the Council on the basis of Article K.3 of the Treaty on European Union introducing a programme of training, exchanges and cooperation in the field of identity documents ('Sherlock')

(96/637/JHA)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Articles K.3 (2) (b) and K.8 (2) thereof,

Whereas the Member States consider identity checks on persons crossing the external borders of the Union and the security of identity documents to be a matter of common interest;

Whereas the establishment of a framework for training, information, study and exchange activities will serve to improve officials' familiarity with the techniques applied in the production and checking of identity documents in other Member States and consequently lend greater effectiveness to the efforts made to combat forgery;

Whereas, thanks to the economies of scale and cumulative effects implicit in the intended measures, these objectives can be achieved more effectively at European Union level than at the level of the individual Member States;

Whereas this joint action will not prejudice the powers of the Community, especially in the field of vocational training, and will therefore not detract from the Community measures taken in implementation of this policy, and in particular the Leonardo da Vinci programme,

HAS ADOPTED THE FOLLOWING JOINT ACTION:

SECTION I

GENERAL

Article 1

Principle and objectives

1. A programme, to be known as 'the Sherlock programme', of training, exchange and cooperation in the field of the security of identity documents within the meaning of the definitions in Article 3, which shall qualify for Community financial support, is hereby established for the period from 1996 to 2000.

2. Without prejudice to the powers of the Community, the general objective of the programme shall be to extend existing cooperation in the matter of identity documents

thanks to its multiannual organization. The definition of clear priorities will serve to rationalize this cooperation in the long term.

Article 2

Total appropriations

The financial reference amount for the implementation of the programme for the period 1996—2000 shall be ECU 5 million.

The annual appropriations shall be authorized by the budgetary authority within the limits of the financial perspective.

Article 3

Definitions

The following definitions shall apply for the purposes of the Sherlock programme:

- Identity documents: documents issued by Member States and non-member countries enabling their holders to prove their identity and cross external borders,
- Training: organization of seminars focusing on theoretical and practical understanding of the security of identity documents,
- Exchange: period spent by an official in a Member State other than his own for the purpose of improving his knowledge of control techniques through first-hand experience,
- Studies: design and dissemination of teaching material for combating of forged identity documents.

SECTION II

STRUCTURE OF THE PROGRAMME

Article 4

Objectives

The main component of the Sherlock programme shall be following annual programmes:

- basic training for instructors,

— further training seminar for recognized specialists on the analysis of documents.

Article 5

Exchanges

The Sherlock programme shall also comprise exchanges of officials. Exchanges shall take the form in particular of work placements of limited duration within the national administrative departments responsible for checking identity documents.

Article 6

Study and research

1. The Sherlock programme shall comprise the design, production and dissemination of teaching material.
2. Ways of improving the circulation of information concerning the fraudulent use of forged identity documents may also be a matter for study and research.

SECTION III

FINANCIAL PROVISIONS

Article 7

Financing criteria

To qualify for Community finance, projects must be of demonstrable interest to the European Union and involve at least three Member States.

These projects may associate participants from the states which have applied for membership where this would contribute to their preparation for accession or other non-member countries where this would be useful for the purpose of the projects.

Article 8

Financial control

The financing decisions and the contracts arising therefrom shall provide for monitoring and financial control by the Commission and audits by the Court of Auditors.

Article 9

Level of Community finance

1. All types of expenditure which are directly chargeable to the implementation of this joint action and

have been incurred over a specific, contractually defined period shall be eligible.

2. The proportion of financial support from the Community shall not exceed 60% of the total cost of the programme save in exceptional cases where, subject to the procedures laid down in Section IV, it shall not exceed 80%.

3. Translation and interpreting costs, computing costs and expenditure on durables or consumables shall not be considered unless they are essential for the realization of the project and shall be financed only up to a limit of 50% of the grant, or 80% in cases where the nature of the project makes them indispensable.

4. Expenditure relating to premises, collective facilities and the salaries of officials of the State and public bodies shall be eligible only if it corresponds to postings and tasks which are not connected with national use or function but are specifically connected with the implementation of this joint action.

Article 10

Rules of procedure

1. Measures incorporated in the programme and financed by the general budget of the European Communities shall be managed by the Commission in conformity with the Financial Regulation of 21 December 1977 applicable to the general budget of the European Communities⁽¹⁾.

2. When presenting the financing proposals, the Commission shall take account of the principles of sound financial management and in particular of economy and cost-effectiveness as required by Article 2 of the Financial Regulation.

SECTION IV

MANAGEMENT AND MONITORING

Article 11

Management of programme

1. The Commission shall be responsible for managing and monitoring the programme and shall take such measures as are necessary to this effect.

⁽¹⁾ OJ No L 336, 31. 12. 77, p. 1. Regulation as last amended by Regulation (EC) No 1831/88 of 18 September 1988 (OJ No L 249, 7. 10. 88, p. 22).

2. The Commission shall draw up a draft annual programme comprising a breakdown of the appropriations available and based on thematic priorities corresponding to the structure and objectives of the programme.

To this effect, the Commission shall scrutinize the projects submitted to it in the light of the following criteria:

- the innovative character of the proposed measure,
- the urgency of the need for the initiative as a way of improving the security of documents,
- the overall consistency of the programme.

Article 12

Annual implementation of the programme

1. The Commission shall be assisted by a committee consisting of one representative from each Member State and chaired by the Commission.

2. The Commission shall submit to the committee the draft annual programme, including a proposal for the distribution of available appropriations between fields of activity and proposals for implementing rules, and for project assessment. The opinion shall be delivered by the committee acting unanimously within a period of two months. This period may be reduced by the chairman for reasons of urgency. The chairman shall not vote.

If a favourable opinion is not delivered within the time limit, the Commission shall either withdraw its proposal or submit a proposal to the Council which shall take a decision unanimously within two months.

SECTION V

FINAL PROVISIONS

Article 13

Devising of programme

1. From the second financial year onwards, projects for which financing is requested shall be submitted to the Commission for scrutiny before 31 March of the financial year to which they are to be charged.

2. Where the financing requested is less than ECU 50 000, the representative of the Commission shall submit a draft to the committee referred to in Article 12(1). The committee, acting by the majority provided for in the second subparagraph of

Article K.4(3) of the Treaty, shall deliver its opinion on this draft within a time limit which the Chairman may lay down according to the urgency of the matter. The Chairman shall not vote.

The opinion shall be recorded in the minutes; furthermore, each Member State shall have the right to ask that its position be recorded in the minutes.

The Commission shall take full account of the opinion delivered by the Committee. It shall inform the Committee of how it has done so.

3. Where the financing requested exceeds ECU 50 000, the Commission shall submit to the committee referred to in Article 12(1) a list of the projects submitted to it under the annual programme. The Commission shall indicate the projects it selects and shall give reasons for its selection. The committee, acting by the majority provided for in the second subparagraph of Article K.4(3) of the Treaty, shall deliver its opinion on the various projects within a period of two months. The Chairman shall not vote. If a favourable opinion is not delivered within the time limit, the Commission shall either withdraw the project(s) concerned or submit it (them), with any opinion from the committee, to the Council which, acting by the majority provided for in the second subparagraph of Article K.4(3) of the Treaty, shall take a decision within two months.

Article 14

Evaluation

Each year the Commission shall undertake an assessment of the measures taken during the previous year and shall address a report to the European Parliament and the Council.

Article 15

Entry into force

This Joint Action shall enter into force on the day of its adoption.

It shall be published in the Official Journal.

Done at Luxembourg, 28 October 1996.

For the Council
The President
D. SPRING