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ON THE FIGHT AGAINST DRUGS  
AND THE IGC

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These briefings have been drafted by the Parliament Secretariat Task Force on the Intergovernmental Conference. Their purpose is to gather together, in an organized, summary form, the proposals and suggestions which the authorities in the Member States, the Union's institutions and specialist commentators have put forward on the issues likely to be on the IGC/96 agenda.

Briefings will be updated as negotiations proceed.

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1. The Court of Justice
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**BRIEFING  
ON  
THE FIGHT AGAINST DRUGS AND THE IGC**

**INTRODUCTION**

The fight against drug use, drug trafficking and the organized crime linked to it is one of the major challenges facing the Member States of the Union in the area of justice and home affairs today.

Over the past ten years drug trafficking has undergone a dramatic rise all over the world and the situation looks very worrying when one considers that, over and above the present situation, the development of new markets and organized trafficking in the Central and Eastern European countries may give citizens of the Union the impression that enlargement of the Union to include these new members will represent a threat to their security.

Establishing a genuine common policy in the fields of justice and home affairs or at least carrying out a partial communitization of the areas covered in points 1 to 6 of Article K.1 (which can already be communitized under the provisions of Article K.9) is one of the objectives on the agenda for the IGC: 'to provide a better response to modern demands as regards internal security'<sup>1</sup> is one of the priorities which will enable the Union to 'meet the legitimate expectations of Europeans'<sup>2</sup> in the light of the worsening spread of drugs.

The fight against drug addiction was listed among the challenges to be met in the years to come at the Turin European Council on 29 March 1996. It is one of the priorities in the work programme of the Irish Presidency, which announced that it had set up an interministerial committee to study ways of making greater progress in this area<sup>3</sup> and hoped to achieve the adoption in Dublin of measures to combat drug trafficking<sup>4</sup>.

On 20 November 1996 the future Dutch Presidency announced to the press its intention of making the fight against drugs a priority item on its work programme for the first half of 1997.

The objective of this briefing is therefore to put the work of the Intergovernmental Conference into context with the help of official position papers, national memoranda and statements by the participants in the debate, giving a picture of the main tendencies.

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<sup>1</sup> Cannes European Council of 26-27 June 1995.

<sup>2</sup> Speech by Mr Santer to the European Parliament in Strasbourg on 22 October 1996.

<sup>3</sup> Irish White Paper on foreign policy of 26 March 1996.

<sup>4</sup> Statement by the President-in-office of the Council, Mr Bruton, at the EP sitting in Strasbourg in September during the State of the Union debate.

The aim is to give an overview and some information on the basis of which to assess progress on an overall strategy to combat drugs, on the eve of the presentation of the draft Treaty by the Irish Presidency in Dublin.

## **THE MAASTRICHT TREATY AND THE FIGHT AGAINST DRUGS**

The Treaty on European Union, which, unlike the Treaty of Rome and the Single European Act, specifically mentions the issue of combating drugs, has given new impetus to the campaign against drug abuse and trafficking in narcotics.

Article 129 states that '*Community action shall be directed towards the prevention of diseases, in particular the major health scourges, including drug dependence*', which should enable the Community to propose measures designed to promote cooperation and mutual assistance between Member States.

The Treaty also provides for increased cooperation in judicial, police and customs matters. In this context the Member States regard the combating of drug addiction and police cooperation to prevent drug trafficking as 'matters of common interest'.

This institutional framework means that the Council and its structures (particularly the COREPER committee of permanent representatives) can play a key role both in implementing the coherent, comprehensive approach set out in the 1990 and 1992 programmes and developed in the new overall plan for the Union (1995-1999) and in ensuring that the work undertaken under the three pillars is consistent.

To these ends, in order to exchange information regarding the effectiveness of national coordination mechanisms, it can convene meetings of the national coordinators with the European Monitoring Centre for Drugs and Drug Addiction<sup>1</sup>.

This centre, in accordance with the Regulation which set it up<sup>2</sup>, is intended, together with its network of national centres (Reitox), to help give an overall view of the drugs phenomenon in Europe<sup>3</sup>.

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<sup>1</sup> Set up on the initiative of CELAD, the former committee to combat drugs.

<sup>2</sup> Regulation 302/93, OJ L 36 of 12 February 1993.

<sup>3</sup> Commission of the European Communities, *Communication from the Commission to the Council and the European Parliament on a European Union action plan to combat drugs* (COM(94) 234 final, Brussels, 23 June 1994, p. 25.

## Police cooperation in Europe and the fight against drugs

At global level stress has been laid on the penal approach in combating drugs.

The European bodies involved in combating drugs include the **TREVI group**<sup>1</sup>, a permanent political and police consultation body at European level, which is made up of four working parties including TREVI III (established in 1986), whose task is to encourage and facilitate the international campaign against drug trafficking through the exchange of information and cooperation among the Member State police services.

With the **Schengen agreement**, the 'laboratory' of increased police cooperation in Europe, the Member States undertook to take the necessary measures to improve existing cooperation between the customs authorities and police of the various Member States, particularly in the area of fighting the traffic in drugs (this collaboration is also the subject of disagreement because of the Netherlands' policy on soft drugs).

The decision to set up a European Police Office , **EUROPOL**<sup>2</sup>, was taken at the Luxembourg European Council in June 1991.

In the first phase of this office's activities, the TREVI group ministers meeting in The Hague on 3 December 1991 confirmed their intention of setting up the Europol Drug Unit (EDU), an information service on drug trafficking. A ministerial agreement of 2 June 1993 then set up the **Europol Drug Unit**, the role of which was restricted by the fact that the data collected could not be stored in a central data bank.

This agreement was later replaced by a common position adopted by the Council of the European Union on 10 March 1995, which provides for the Drug Unit to act as a team responsible for exchanging and analysing information and data regarding trafficking in drugs, radioactive material, clandestine immigration networks, unlawful trade in vehicles and the criminal organizations and money-laundering activities involved<sup>3</sup>.

The agreement setting up Europol was to have been adopted by October 1994, but it proved impossible to meet this deadline and it was not signed until 26 July 1995. However, the instrument still has to be ratified by all the Member States (at the informal Dublin meeting of 26 and 27 September 1996 the Ministers undertook to complete the ratification by the end of 1997, with completion by next summer as the objective).

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<sup>1</sup> Set up as part of the 1975 European Council initiative to bring together the home affairs ministers at regular intervals to discuss matters pertaining to public order and internal security.  
<sup>2</sup> The permanent headquarters of which is in The Hague, in accordance with the decision of the Brussels European Council of 29 October 1993.  
<sup>3</sup> Joint action of 10 March 1995, adopted by the Council on the basis of Article K.3 of the Treaty, concerning the extension of the activities of the Europol Drug Unit, OJ L 62, 20.3.1995.

## **POSITION OF THE INSTITUTIONS**

### **1. THE EUROPEAN COUNCIL**

The Madrid European Council of 15 and 16 December 1995, noting the urgency of the problem of the rise in organized crime on a global scale, declared: 'We all agree that the Conference should strengthen the Union's capacity to protect its citizens against terrorism, drug trafficking, money laundering, exploitation of illegal immigration and other forms of internationally recognized crime ... Some would also like to extend Community competence to combating drug addiction ...'.

The report of 5 December 1995 by the **Reflection Group** (the Westendorp report) suggests incorporating in the Treaty a specific legal base for the implementation of measures to combat drug trafficking and mentions the idea that the EU should explore ways to achieve more structured cooperation with the Council of Europe in combating drugs.

The Florence European Council of 21 and 22 June 1996, having stressed 'the vital importance of reinforced cooperation between Member States to fight against drugs', reiterates the need 'speedily [to complete] the study about harmonization of Member States' laws and the influence thereof on reducing consumption of and illicit trafficking in drugs', reaffirming also the need to work with the Central and Eastern European countries.

The Dublin European Council of 13 and 14 December 1996, having noted with satisfaction that the Irish Presidency's document gives particular importance to justice and home affairs, calls on the Intergovernmental Conference, 'taking account of the outline draft for Treaty revision presented by the Presidency, to work to reach agreement on a strengthened capacity for action in relation to ... the fight against drugs and international crime'.

The Dublin Council noted that the agreement reached on a Joint Action on the approximation of national legislation and the resolutions approved at the Justice and Home Affairs Council of 28 and 29 November 1996 constituted a first step and suggested further harmonization of laws, ongoing review of cooperation between law enforcement agencies, development of research in this area, implementation of the action plan to combat drugs in the Caribbean, and an examination of 'ways to assist Central Asian republics, using the TACIS programme, to fight transit in and production of drugs'.

### **2. THE COUNCIL**

The Council of Home Affairs and Justice Ministers of 28 and 29 November 1996 provided an opportunity for the Irish Presidency to make significant progress in the area of combating drugs. At the end of the debates the Irish Justice Minister, Mrs Owen, announced that the Fifteen had agreed on a draft joint action aimed at harmonizing legislation and the practices used by the police and the customs and judicial authorities in the fight against drug addiction and drug trafficking.

At the same Council the Ministers approved a resolution confirming their desire to exact the heaviest possible penalties for serious drug trafficking offences and to fight more effectively against drug tourism and drug production.

### 3. THE EUROPEAN PARLIAMENT

The European Parliament, which is extremely concerned at the rise in drug addiction, has not sat idly by.

As early as 1980 the European Parliament adopted a resolution on 'combating drug addiction', in which it said that a problem of such gravity could not be solved on an exclusively national basis (OJ C 85, 10.3.1980).

Two years later the EP adopted a new resolution on the basis of a report by Mrs Scrivener, which opened the way to communitization of the approach to the drug problem (OJ C 149/120, 14.6.1982).

In 1985 the EP set up a committee of inquiry into the problem of drugs in the Member States of the Community. The committee's report (called the Stewart-Clark report after its rapporteur) proposed ways of working to promote education and prevention and recommended improving the coordination and effectiveness of all the bodies responsible for preventing drug trafficking (OJ C 283, 10.11.1986).

In 1991 the EP set up another committee of inquiry to analyse the relations between drug trafficking and international crime (*Session document*, 23 April 1992).

In 1994 a report by Mr Taradash on drugs policy triggered a lively debate between proponents of decriminalizing drug use and the prohibitionist lobby (referred to in a resolution of 13 March 1992).

The motion for a resolution by Mr Taradash was rejected by 116 votes to 113 (OJ C 77/13, 14 March 1994).

In 1995 the EP drew up a report on the Commission communication on the 1995-1999 action plan to combat drugs and stated that the initiatives taken to combat drugs had not succeeded in attacking the growing power of the traffickers nor in limiting the increasingly obvious influence of capital of dubious origin in our society.

It went on to call on the IGC to make the fight against drugs part of Community competence in order to ensure that action in this area was not hampered more seriously by the separation of the three pillars, a separation whose effects are exacerbated by other areas of compartmentalization within the third pillar (*Session document*, 2 June 1995, p. 14).

The same opinion is expressed by the Bourlanges Martin report and its resolution on the operation of the Treaty on European Union with a view to the IGC of 17 May 1995, in which the EP advocates gradual communitization of the fight against drug addiction.

At the December 1996 part-session, when it adopted a resolution on the progress achieved in 1996 in implementing cooperation in the field of justice and home affairs, Parliament expressed its concern that so little progress had been made so slowly and regretted that the measures adopted in this area did not take account of Parliament's wishes as expressed in its resolution of 15 June 1995 on the communication from the Commission to the Council and the European Parliament on a European Union action plan to combat drugs (1995-1999)(COM(94)0234 - C4-0107/94).

#### **4. THE COMMISSION**

The Commission has taken a number of measures in the area of drug addiction, supporting experimental pilot schemes in the treatment of drug addiction, development aid projects, information campaigns, etc.

However, the Commission's activities have really taken off since 1986, when it began to take part in the activities of the 'Pompidou Group' and issued a communication in November of that year on Community actions to combat the use of illicit drugs (OJ, 28 November 1986, COM(86)0601 final).

As far as the communitization of certain areas governed by Title VI of the TEU is concerned, in a text forwarded to the Council on 18 September 1996 on the provisions relating to justice and home affairs, the Commission proposed a scheme for the insertion of a chapter in the Treaty to which certain areas currently covered by Title VI, including the whole question of combating drugs, would be transferred:

### ***Preliminary draft Treaty***

#### **PART THREE: COMMUNITY POLICIES**

#### **TITLE (NEW): AN AREA OF LIBERTY, SECURITY AND JUSTICE**

#### **ARTICLE A**

1. *The European Community shall be an area of liberty, security and justice in which, inter alia, freedom of movement shall be guaranteed to all persons, as set out in Article 7A.*

*To this end the Community shall adopt appropriate provisions relating:*

- *to the abolition of border controls and to the crossing of external borders;*

- *to asylum policy, immigration policy and policy regarding third-country nationals;*
- *to combating the worldwide phenomenon of drugs, pursuing a coordinated, integrated policy in this area and harmonizing, as far as is necessary, the policies and strategies of the Member States;*
- *to combating economic and financial crime damaging to the interests of the Community and fraud on an international scale.*

*The Community shall also adopt appropriate provisions with a view to:*

- *facilitating the exercise of personal rights in the civil and administrative fields;*
  - *strengthening cooperation between the national authorities concerned by the matters dealt with in this Title, particularly the customs authorities.*
2. *The formulation and implementation of other Community policies and measures shall take account of the need to maintain and develop an area of liberty, security and justice.*
  3. *The provisions of this Title shall be supplemented by cooperation in the fields of justice and home affairs.*

In this outline of what might become a chapter of the Treaty, Article D is devoted entirely to 'combating the worldwide phenomenon of drugs'.

#### **ARTICLE D**

*With a view to contributing to combating the worldwide phenomenon of drugs, the Council, acting in accordance with the procedure referred to in Article 1, shall adopt appropriate provisions in the following areas:*

- *public health, including preventing of drug addiction, reducing the demand for drugs and the associated risks, and the care and treatment of drug users;*
- *the exchange of information and experiences and the promotion of all forms of cooperation, including the prevention of drug-related crime;*
- *reducing the drug supply and repressing unlawful trafficking, including the international cooperation on which these depend.*

#### **PRELIMINARY DRAFT TREATY DRAWN UP BY THE IRISH PRESIDENCY**

'If there is one area in which the Irish Presidency has made an outstanding contribution, it is that of justice and home affairs. The fight against drugs is a priority of the people. It was an Irish priority; Dublin has shown that it is a European priority' (Jacques Santer on 15 January 1997 in Strasbourg).

The draft treaty presented by the Irish Presidency advocates coordinated action on some aspects of the problem of illegal drugs (Chapter 2, Article E). The proposed text makes it possible, in particular, to 'provide a clearer and more focused definition of the areas in which the Member States would cooperate and develop common action ... These areas would include in particular ... combating illegal drug trafficking' (Chapter 3, Section I), which is listed in Article K among the areas of common interest to the Member States in which cooperation can take place and joint actions be implemented.

With a view to 'combating all forms of international crime, including ... illicit trafficking in narcotic drugs and psychotropic substances', the new Article K.1 proposes a series of very detailed measures designed to extend the functions of Europol and to harmonize national laws and regulations.

## **THE DUTCH PRESIDENCY**

The home affairs section of the Dutch Presidency's programme pays particular attention to the fight against drugs. The Netherlands will concentrate on improving cooperation and exchange of experiences in the area of prevention.

On the occasion of the IGC ministerial meeting of 24 February 1997 in Brussels, the Presidency forwarded to the Member States a working document containing the text of Treaty articles designed gradually to put in place an area of freedom, security and justice.

The text makes a qualitative leap in order to meet the security challenges faced by society, involving itself closely in areas such as the fight against drugs, and establishes flanking measures designed to protect the safety of individuals.

## **THE MEMBER STATES**

### **BELGIUM**

In its policy note on the IGC the Belgian Government advocated 'all possible means of applying the Community method to the third pillar' being tried.

Practically speaking, it states that it is in favour of transferring to the first pillar customs cooperation in order to combat the aspects of the drug problem which are linked to the free movement of goods.

The memorandum of 7 March 1996 by the Governments of Belgium, Luxembourg and the Netherlands states that the third pillar offers a temporary framework for cooperation on a number of matters such as combating drug trafficking.

## **DENMARK**

With regard to cooperation on justice and home affairs, the Danish Government in its memorandum of 11 December 1995 takes the view that intergovernmental cooperation must continue to be the norm, but with the possibility of simplifying the existing decision-making process with regard to organized crime, drug trafficking and illegal immigration.

## **GERMANY**

According to the reflection document of 13 June 1995 on a European constitutional state, the collaboration already undertaken in accordance with the provisions of Article K of the Treaty on European Union and Article 100 of the EC Treaty should serve as a basis for the drafting of common rules and measures, particularly where drug trafficking is concerned.

## **SPAIN**

In the document of 2 March 1995 entitled 'The 1996 Intergovernmental Conference. A reflection paper', Spain comes out in favour of changing from unanimity to qualified majority voting in the area of drug addiction.

## **FRANCE**

In the joint letter of 6 December 1995 Mr Jacques Chirac and Mr Helmut Kohl propose as the second priority objective the establishment of a homogeneous area in which freedom of movement of persons will be guaranteed through greater cooperation in combating the scourge of drugs.

But as far as police cooperation is concerned, the memorandum of 20 February 1996 on France's main policy lines for the IGC regards intergovernmental cooperation as the 'most desirable' solution.

Mr Barnier, in his report to the National Assembly's EU Delegation after the Dublin Conference, said that in the fight against drugs France proposed defining a legal base common to all the Member States, consisting in a dual right of initiative for the Council and the Commission, with consultation of the national parliaments.

In a second joint letter sent by Jacques Chirac and Helmut Kohl to John Bruton at the Franco-German summit of 9 December 1996 in Nuremberg, the two countries declared that in order to fight more effectively against drug addiction and drug trafficking it would be necessary 'to harmonize both the practical and the legal bases'.

According to the French National Assembly's EU Delegation, which has adopted a report entitled 'A Europe of Freedom and Security', the principle of unanimity must continue to be the rule within the third pillar, but in the case of anti-drugs policy, 'the Treaty should provide for the Council to adopt a basis of common minimum rules by a qualified majority'.

## **IRELAND**

The Irish Government made the specific issue of combating drugs one of its highest priorities, and announced its wish to set up an interministerial committee with a view to considering how greater progress could be achieved in the work of the EU.

## **LUXEMBOURG**

The Luxembourg Government, in its aide-mémoire of 30 June 1995 on the IGC, also declares itself to be in favour of the application of the rules set out in Article 100C in the area of combating drug addiction.

## **NETHERLANDS**

In the third memorandum of 23 May 1995 for the IGC, the Government of the Netherlands, after saying that in its opinion the question of drug trafficking could not be viewed from a purely national angle, describes the poor results so far achieved in combating drug trafficking in the framework of the present policy on justice and home affairs.

## **AUSTRIA**

The Austrian Government, having stated in its document of June 1995 on the issues to be discussed at the IGC that it broadly shared the conclusions of the Commission, the Council and Parliament on the failure of policy in the fields of justice and home affairs, calls for clarification of areas of competence in the fight against drugs and takes the view that it would be desirable to introduce supranational coordination of the police and judicial authorities.

## **PORTUGAL**

With regard to police and judicial cooperation in combating drug trafficking, Portugal restricts itself to proposing a substantial reinforcement of the existing intergovernmental cooperation mechanisms. (Document drawn up by the Foreign Affairs Ministry, March 1996.)

## **SWEDEN**

Sweden declares its willingness to comply with cooperation in the Schengen areas, provided that effectiveness in combating drugs is thus increased. (Swedish Government communication on the IGC, 30 November 1995.)

## **UNITED KINGDOM**

The United Kingdom Government is in favour of maintaining the status quo, i.e. of leaving the matter of combating drugs under the third pillar.

## CONCLUSIONS

There would seem finally to be a certain consensus on the use of Community methods and procedures in the area of combating drugs.

This is the conclusion that can be drawn from the fact that the Dorr Group<sup>1</sup> agreed to include a new Title in the future Treaty entitled: "An area of liberty, security and justice"<sup>2</sup>.

We are increasingly witnessing the construction of a Europe of internal security, which is certainly one of the most clearly discernible responses to the need of European citizens for security.

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*For further information on this briefing, please contact Mr Alain BARRAU, DG IV, Brussels, Tel. 43616, or Miss Carlotta PREVITI, DG IV, Brussels, Tel. 42566.*

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<sup>1</sup> Made up of the personal representatives of the Foreign Affairs Ministers and chaired by Noell Dorr.  
<sup>2</sup> See Commission proposal.

