

8166/95

LIMITE

JUSTPEN 88

**"I"/"A" ITEM NOTE**

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to: Coreper/Council

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No. prev. doc.: 7963/95 JUSTPEN 85

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Subject: Draft Resolution on the protection of witnesses in the fight against international organized crime

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At its meeting on 14 June 1995, Coreper agreed to the draft Resolution annexed hereto. The Council is therefore called upon, in part "A" of its agenda for a forthcoming meeting, to:

- adopt the draft Resolution unanimously, and
- order its publication in the "C" series of the Official Journal of the European Communities.

**DRAFT**  
**RESOLUTION**

**on the protection of witnesses  
in the fight against  
international organized crime**

The Council,

Having regard to the Treaty on European Union,

Having regard to the Recommendations to step up judicial cooperation adopted by the Ministers for Justice and Home Affairs at their meeting in Kolding (Denmark) on 6 and 7 May 1993,

Having regard to the priorities set by the Justice and Home Affairs Council on 29 and 30 November 1993 and the work programme for 1994 drawn up by the Council,

Having regard to the conclusions of the Justice and Home Affairs Council meeting on 30 November and 1 December 1994,

Whereas the fight against international organized crime requires that in the Member States the safety of witnesses be effectively ensured in practice while complying with the Convention for the Protection of Human Rights and Fundamental Freedoms,

- A. Calls on the Member States to guarantee proper protection of witnesses taking account of the following guidelines:
1. for the purposes of this Resolution, "witness" means any person, whatever his legal status, who possesses intelligence or information regarded by the competent authority as being material to criminal proceedings and liable to endanger that person if divulged;
  2. such witnesses should be protected against all forms of direct or indirect threat, pressure or intimidation;
  3. Member States must ensure proper and effective protection of witnesses before, during and after trials, where the competent authorities deem this necessary;
  4. such protection must also be extended to the parents, children and other close relatives of witnesses if necessary in order to avoid any form of indirect pressure;

5. when this protection is instituted, each case will have to be examined individually to determine whether the agreement of the witness and his relatives should be sought;
  6. the competent authorities should be able to decide, of their own accord or at a witness's request, that the address and identifying particulars <sup>(1)</sup> of the witness should be known only to those authorities;
  7. if the threat is extremely serious, a change of identity for the witness and, if necessary, for members of his immediate family, may be allowed;
  8. one of the forms of protection to be envisaged is the possibility of giving evidence in a place other than that in which the person being prosecuted is situated through the use, if necessary of audiovisual methods, subject to observance of the adversary principle as interpreted in the case law of the European Court of Human Rights;
- B. Calls on Member States to facilitate judicial assistance in this field, even in the absence of any such provisions in the legislation of the State to which the request is addressed, save where compliance with the request for assistance would be contrary to the general principles of that State's law. In order to facilitate the use of audiovisual methods, the following points, in particular, should be taken into consideration:
1. In principle, it should be envisaged that the hearing may be conducted under the legal and practical conditions of the requesting State only;
  2. If the legislation of either State allows for the witness to be assisted by an adviser during the hearing, it should be possible for such assistance to be arranged in the territory of the State in which the witness is situated;
  3. Translation costs and the cost of using audiovisual methods should be borne by the requesting State, unless otherwise arranged with the State to which the request is addressed.
- C. Calls on Member States to carry out an assessment of the implementation of this Resolution in practice and instructs the appropriate bodies to report to it by the end of 1996 at the latest.

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<sup>(1)</sup> Some delegations specified that, according to their reading of the text, the identity of the person was not covered by point A.6.