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# SEMDOC

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## REPORT

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from : Working Party on Extradition

to : Steering Group III (Judicial Cooperation on Civil and Criminal Matters)

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Subject: Progress report on the draft Convention on simplified extradition procedures  
between the Member States of the European Union

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### I. Introduction

1. At its meeting on 30 November and 1 December 1994 the Council noted political agreement on the desirability of drawing up a unilateral legal instrument on simplified extradition procedures. The Council gave instructions in that connection for a draft Convention to be prepared within the first half of 1995.

At the informal meeting in Paris on 26 January 1995, Ministers said they would like this Convention signed at the Council meeting on 9 and 10 March 1995.

### II. Work completed

2. In line with these instructions, work was conducted on the basis of
  - the text on which the Council meeting on 30 November and 1 December 1994 had already recorded very broad agreement on the results achieved; this text is contained in 10827/94 JUSTPEN 87;
  - a draft Convention on simplified extradition procedures submitted by the Presidency (12138/94 JUSTPEN 100).
3. Work was conducted on the understanding that the stipulations of the European Convention on Extradition still applied for all matters not covered by this Convention.

The draft Convention lays down simplified extradition procedures between Member States of the European Union where a person is the subject of a request for provisional arrest or extradition. It lays down the terms and other aspects for these procedures to be implemented.

4. At the meeting of the Working Party on Extradition on 13 and 14 February 1995 broad agreement was reached on the whole draft Convention as annexed hereto, without prejudice to linguistic scrutiny reservations by a number of delegations.
5. Nevertheless, there were still some reservations which the Working Party thought needed to be referred to Steering Group III, since the Convention was due to be signed at the Council meeting on 9 and 10 March 1995. These points are as follows:

– Article 7 (Establishing consent)

Paragraph 1

The Finnish delegation requested that it be possible for consent also to be given before the administrative authorities.

Paragraph 4

The Spanish and Netherlands delegations had scrutiny reservations on the approach to be taken in this paragraph regarding the consent of the person. They wanted this consent to be irrevocable and sought guarantees from the three Member States which considered that such consent could be revoked under certain conditions.

The Belgian delegation suggested adding a paragraph 5 on deadlines in the event of revocation of consent by the person concerned. <sup>(1)</sup>

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<sup>(1)</sup> This would read as follows:

"Where the requested State has made the declaration provided for in paragraph 4, any revocation of consent by the person concerned shall result in a new period being established, in accordance with Article 16(4) of the European Convention on Extradition. The starting point for that period will be the day of notification by the requested State to the requesting State."

– Article 12 (Consent given after expiry of the deadline laid down in Article 8)

Article 12 was redrafted in the light of the Working Party's discussions. Its purpose is to make it clear that use of the simplified procedure is compulsory where the person concerned has given his consent after the ten days following provisional arrest, if no request for extradition has been received. Use would be optional where, after that time, a request for extradition was received by the requested State. Although Member States could broadly go along with this approach, the Steering Group ought to record its agreement to the substance of the text.

– Article 14 (Transit)

A number of delegations had reservations on the insertion of paragraphs (a) and (b) into Article 14 (D/P/NL). Also, some delegations which had entered reservations or statements (D/UK) re Article 21 of the European Convention on Extradition, dealing with transit, wanted assurances that the provisions of this Convention would not derogate from them. One delegation (E) was prepared to drop its statement in the European Convention on Extradition (Article 21(5)) in the context of this Convention.

– Article on the combination of applications

In the Working Party's discussions, most delegations thought there was no need to include a provision along the lines of that in Article 13 of the draft Convention submitted by the Presidency (12138/94 JUSTPEN 100) dealing with the situation where there are several applications for provisional arrest <sup>(1)</sup>. The French delegation entered a reservation on dropping this provision.

– Explanatory report on the Convention

The Working Party discussed whether an explanatory report on the Convention needed to be drafted. While one or other delegation would have preferred such a report to be adopted together with the Convention, thus constituting an authentic interpretation of the text of the Convention, the majority thought it desirable to draw up an explanatory report at a later date.

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<sup>(1)</sup> Article 13 reads as follows:

- "1. Where several applications for provisional arrest are made simultaneously, the simplified extradition procedure shall be implemented only provided the person in question consents to extradition with respect to all the applications.
2. The competent authority referred to in Article 5(2) shall determine the State to which the person is to be extradited in the light of the criteria defined in Article 17 of the European Convention on Extradition.
3. Where a further application for provisional arrest is received after the person has given his consent, that application shall not be implemented.
4. The competent authority referred to in paragraph 2 shall inform the requesting authority that an application for provisional arrest has been refused and shall indicate the State to which the person is to be surrendered."

Were the second opinion to prevail, it would have to be decided in due course who would be the rapporteur on the Convention.

– Other points

The Finnish delegation entered a scrutiny reservation on Article 1. The Irish delegation entered a reservation on Article 13. The Italian delegation had a scrutiny reservation because it did not have an Italian version of the draft Convention.

### III. Conclusions

In view of these considerations, the Working Party on Extradition suggests that Steering Group III should:

- examine the final questions outstanding on the draft Convention (see point II);
- note agreement in principle on the other points of the draft Convention;
- after its discussions, forward the draft Convention to the K4 Committee so that the Convention can be signed at the meeting of the Council on 9 and 10 March 1995.

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COUNCIL ACT No .....

of \_\_\_\_\_

establishing the Convention on simplified extradition procedures  
between the Member States of the European Union

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THE COUNCIL OF THE EUROPEAN UNION,

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

**Whereas** under Article K.1 of the Treaty on European Union, the rules governing simplified extradition procedures between the Member States of the European Union are matters of common interest coming under the cooperation provided for in Title VI of that Treaty;

**Having decided** that the Convention of which the text is given in the ANNEX, signed today by the Representatives of the Governments of the States of the Union, is hereby established;

**Recommends** that it be adopted by the Member States in accordance with their respective constitutional rules.

Done at Brussels,

For the Council  
The President

CONVENTION

on simplified extradition procedures 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 ....,

DESIRING to improve judicial cooperation between the Member States of the European Union in criminal matters, both with regard to proceedings and execution of sentences,

RECOGNIZING the importance of extradition in judicial cooperation in order to pursue these objectives,

CONVINCED of the need to simplify extradition procedures to the extent that this is compatible with the basic principles of their law, <sup>(1)</sup>

NOTING that in a large number of extradition proceedings the person claimed consents to his surrender,

NOTING also that, in this case, arrest for extradition purposes lasts several months,

CONSIDERING that such a length of time is not justified in cases where the person consents to his surrender, and that this could be prejudicial both to the interests of the individual concerned and to the efficiency of the administration of criminal justice,

CONSIDERING that as a result application of the European Convention on Extradition should be made easier by simplifying or improving extradition procedures,

CONSIDERING that the provisions of the European Convention on Extradition remain applicable for all matters not covered by this Convention, subject to the principles laid down by the European Convention for the Protection of Human Rights and Fundamental Freedoms <sup>(2)</sup>,

HAVE AGREED ON THE FOLLOWING PROVISIONS:

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<sup>(1)</sup> Text worded to take account of the concern of the Portuguese and Greek delegations in particular.

<sup>(2)</sup> Text worded to take account of the concern of the Portuguese delegation.

**CONVENTION ON SIMPLIFIED EXTRADITION PROCEDURES BETWEEN  
THE MEMBER STATES OF THE EUROPEAN UNION**

**Article 1: General provisions <sup>(1)</sup>**

1. The aim of the provisions of this convention is to facilitate the application between the Member States of the European Union of the European Convention on extradition of 13 December 1957 by amending or supplementing the said Convention.
2. Paragraph 1 shall not affect the application of more favourable provisions in the bilateral and multilateral agreements in force between certain Member States.

**Article 2: Surrender obligation**

Member States undertake to surrender to each other under simplified procedures persons wanted for the purpose of extradition, upon consent of the person concerned and the agreement of the requested State in accordance with the provisions of this Convention.

**CHAPTER 1**

**Article 3: Conditions for surrender**

1. 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 the arrangements laid down in Articles 4 to 11.
2. Such surrender shall not be subject to submission of a request for extradition or the documents required in accordance with Article 12 of the European Convention on Extradition.

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<sup>(1)</sup> Scrutiny reservation by the Finnish delegation.

#### **Article 4: Data provided**

1. The following data 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 within the meaning of 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;
  - (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) insofar as possible, the consequences of the offence.
  
2. Notwithstanding the provisions of paragraph 1, further data may be requested if, in particular cases, the above data are insufficient to allow the competent authority to authorize the surrender.

#### **Article 5: Consent**

1. The consent of the arrested person shall be given in accordance with the provisions of Articles 6 and 7.
  
2. The competent authority shall give its agreement in accordance with its national procedures.

#### **Article 6: Information of the person**

Where a person wanted for the purpose of extradition is arrested on the territory of another Member State, the authority competent under its national law shall inform that person 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 law of that State. <sup>(1)</sup>
2. Each Member State shall adopt the measures necessary to ensure that consent, and where appropriate renunciation, as referred to in the previous paragraph, 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 law of the requested Member State.
4. Consent, and where appropriate renunciation, as referred to in paragraph 1, may not be revoked <sup>(2)</sup>. Upon deposit of their instruments of ratifications, acceptance or accession, Member States may indicate, in a declaration, that consent and where appropriate renunciation may be revoked, in accordance with the rules applicable to national law.

## **Article 8: Communication of consent**

1. The requested State shall communicate consent immediately to the requesting State. In order to enable the requesting State to submit, where applicable, a request for extradition, the requested State shall notify it no later than ten days after provisional arrest whether or not the person has given his consent.
2. Such communication shall be made directly between the competent authorities.

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<sup>(1)</sup> The Finnish delegation entered a reservation.

<sup>(2)</sup> Scrutiny reservations by the Spanish and Netherlands delegations. The Belgian delegation wanted a paragraph 5 to be added, reading as follows  
"Where the requested State has made the declaration provided for in paragraph 4, any revocation of consent by the person concerned shall result in a new period being established, in accordance with Article 16(4) of the European Convention on Extradition. The starting point for that period will be the day of notification by the requested State to the requesting State."

### **Article 9: Renunciation of entitlement to speciality**

Each Member State may declare upon deposit of its instrument of ratification, acceptance 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:

- (a) agrees to extradition or
- (b) having agreed to extradition, expressly renounces his entitlement to speciality.

### **Article 10: Communication of the 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 communicated directly between the competent authority of the requested State and the authority of the requesting State which has requested arrest within the meaning of Article 16 of the European Convention on Extradition.
2. The decision shall be communicated at the latest within 20 days of the date on which the person consented to his surrender.

### **Article 11: Deadline for surrender**

1. Surrender shall take place within 20 days of the date on which the simplified extradition decision was communicated under the conditions laid down in Article 10(2).
2. After the deadline laid down in the preceding paragraph, if the person is being held he shall be released on the territory of the requested Member State.
3. Should surrender of the person within the deadline laid down in paragraph 1 be prevented by "force majeure", the competent authority 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, paragraph 2 of this Article shall apply with effect from the new date agreed on for surrender.

4. The provisions of the previous three paragraphs shall not apply in cases where the requested Member State wishes to make use of Article 19 of the European Convention on Extradition.

## CHAPTER II

### Article 12: Consent given after expiry of the deadline laid down in Article 8 <sup>(1)</sup>

1. Where consent has been given after the deadline of 10 days laid down in Article 8, the requesting State
  - shall implement the simplified procedure and apply the provisions of Articles 5, 7, 9, 10 and 11 above if a request for extradition within the meaning of Article 12 of the European Convention on Extradition has not yet been received by the requested State;
  - may use the simplified procedure in compliance with the Articles referred to in the previous indent if a request for extradition as referred to in the previous paragraph has reached it in the meantime.
2. Upon deposit of its instrument of ratification, acceptance or accession, each Member State shall state whether it intends to apply the second indent of Article 12(1) and, if so, under what conditions.

## CHAPTER III

### Article 13: Re-extradition to another Member State <sup>(2)</sup>

Where the speciality rule has not been applied to the person extradited, in accordance with the declaration provided for in Article 9 of this Convention, Article 15 of the European Convention on Extradition shall not apply to re-extradition to another Member State.

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<sup>(1)</sup> Text drawn up as a result of the Working Party's discussions. It was agreed that the Steering Group would re-examine this Article.

<sup>(2)</sup> Reservation by the Irish delegation.

## **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) transit through the territory of a Member State shall result in submission of an application only if the extradited person must enter the territory of the State of transit;] <sup>(1)</sup>
  
- [(b) for the purposes of the Convention, overflying the territory of the State of transit shall not be regarded as entering its territory;] <sup>(2)</sup>
  
- (c) in an emergency, an application containing the data required in Articles 4 to 10 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;
  
- (d) the documents and data 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 procedure and to take the constraint measures needed for execution of the transit vis-à-vis the extradited person.

<sup>(3)</sup>

## **Article 15: Determining the competent authorities**

Upon deposit of its instrument of ratification, acceptance or accession, each Member State shall indicate, in a statement, which authorities are competent within the meaning of Articles 4, 5, 6, 7, 8, 10 and 14.

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<sup>(1)</sup> Reservations by the D/NL and P delegations.

<sup>(2)</sup> Reservations by the D and P delegations.

<sup>(3)</sup> Some Member States (in particular UK/NL and D) said that they wanted to protect, in the context of this Convention, the declarations and reservations made on transit in the context of the European Convention on Extradition (see Article 21). Other delegations were ready to withdraw such reservations in the context of this Convention.

## CHAPTER IV

### Article 16:    **Entry into force**

1. [This Convention shall be open for signature by the Member States. It is subject to ratification, acceptance or approval. The instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the Council of the European Union. The General Secretariat of the Council shall notify all Member States of such deposit.] <sup>(1)</sup>
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 of the European Union on the date of opening for signature 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 later date, declare that with respect to itself the Convention shall apply to its relations with Member States that have made the same declaration 90 days after the date of deposit of such declaration.
4. The 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 the Convention in the language of the acceding State, drawn up by the Secretary-General 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.

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<sup>(1)</sup> Subject to adaptation in the light of the decision taken by the Permanent Representatives Committee on Conventions covered by Title VI of the Treaty.

3. The instruments of accession shall be deposited with the Secretary-General of the Council of the European Union.
4. This Convention shall enter into force with respect to any State that accedes 90 days after 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 period of 90 days.
5. Where the Convention is not yet in force at the time of the deposit of the instrument of accession, Article 16(3) shall apply to acceding Member States.

IN WITNESS WHEREOF, the undersigned Plenipotentiaries have hereunto set their hands.

DONE at \_\_\_\_\_, on 10 March 1995, in a single copy, in German, English, Danish, Spanish, Finnish, French, Greek, Irish, Italian, Dutch, Portuguese and Swedish, the texts drawn up in each of these languages being equally authentic and 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.

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