

**SEMDOC**  
Statewatch European Documentation &  
Monitoring Centre on justice and home  
affairs in the European Union

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**NOTE**

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from : The Presidency

to : K4 Committee

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The Treaty of Amsterdam signed on 2 October 1997 is currently being ratified by the individual Member States. The Treaty is expected to enter into force in the first half of 1999.

With the entry into force of the Treaty of Amsterdam, the Schengen acquis will be integrated into the EU and part of the field of justice and home affairs will be transferred from Title VI TEU to Title IV TEC. The repercussions of this communitarisation are far-reaching. For the fields of external border controls, asylum and immigration policy and judicial cooperation in civil matters (in addition to the visa field, already partially communitarised since Maastricht) Community law instruments will apply instead of Agreements, the Court of Justice of the European Communities will have far reaching powers and the Commission will have an exclusive right of initiative after a transitional period. Five years after entry into force of the Treaty of Amsterdam, the Council will be called upon to decide unanimously whether the procedure under which legislative acts are adopted by the Council acting unanimously after consultation of the European Parliament should be replaced by the co-decision procedure for some or all of the areas covered by Title IV TEC.

On the question as to how the provisions of the Treaty of Amsterdam concerning the establishment of an area of freedom, security and justice may be best implemented, the Council and Commission submitted an action plan to the Vienna European Council for approval. This action plan sets out the short-term and medium-term priorities in the field of Justice and Home Affairs and, at the same time, stresses the need to make the necessary arrangements for structures of work before the Treaty of Amsterdam enters into force.

The ideas set out in this document are intended to facilitate the taking of decisions on structures of work. The K.4 Committee is submitting this document to the Council after careful consideration, pursuant to its mandate under Article K4 of the TEU, "to give opinions for the attention of the Council ... on its own initiative". The views expressed hereafter by the K.4 Committee are the fruits of nearly five years' experience of specialised coordination work. This experience can also be used to develop the new organisational structure provided for in the Amsterdam Treaty and will help to optimise the future allocation of tasks and method of work.

**I. Impact of communitarisation on the activities of the Council, Coreper, the K.4 Committee and Council working parties**

1. The transfer of the fields of visa, asylum and immigration policy and judicial cooperation in civil matters to Community law has no effect on the fact that these subjects will in future continue to be dealt with by the Council in its composition of Ministers of Justice and Home Affairs. It is for that Council to ensure the necessary coordination between the individual pillars through all appropriate standing arrangements.

Although it is a matter for each Member State to determine by whom it shall be represented in the Council in view of the items included on its agenda, it has to be expected that certain items appearing on the agenda of a particular Council, e.g. items relating to the functioning of the internal market, sometimes cover aspects which, at the national level, fall within the principal responsibility of Ministers of Justice or Home Affairs. At their informal meeting in Vienna on 29 and 30 October 1998, the Ministers of Justice and Home Affairs agreed to carry out a regular exchange of information and opinions on justice-related plans in the field of the internal market and consumer protection – without prejudice to the continuing competence of the decision-making specialised Councils.

2. The question for the K.4 Committee, given that it retains overall responsibility for coordination in all the fields at present covered by Title VI of the TEU until the Amsterdam Treaty enters into force, is, however, which bodies should coordinate preparatory work for the Justice and Home Affairs Council after that date. On account of the continuing strong interdependency in terms of content of the subject areas to be divided up in future between the first and third pillar, and in order to ensure the establishment of an area of freedom, security and justice, there will be a need in various areas not only for intense internal coordination within the Member States, but also for cross-pillar coordination at the level of officials. At present, and also after entry into force of the Treaty of Amsterdam, coordination at the highest preparatory level will be through Coreper. This does not however solve all the coordination problems; indeed, there is probably no ideal solution.

It is also worth recalling that the Treaty of Amsterdam provides explicitly for a Coordinating Committee consisting of senior officials on the remaining third-pillar matters (police cooperation and judicial cooperation in criminal matters), in addition to Coreper (Article 36 of the TEU). The Committee's mandate is clearly defined in the TEU in its revised version and excludes the justice and home affairs topics communitarised by the Treaty of Amsterdam.

3. Concerning those areas of responsibility which are not covered by the Article 36 Committee and which are "communitarised" by the Treaty of Amsterdam the role of Coreper (Part 2) is laid down in Article 207 TCE which includes taking care of cross-Pillar coordination and dealing with horizontal issues. In addition, the following options could be considered :

- 3.1. Since judicial cooperation in civil matters is quite separate from the other areas transferred to the domain of Community law, and also from the areas continuing to be covered by the TEU, the question arises as to whether these matters require additional coordination before they are referred to Coreper. This seems not to be justified. However, the previous practice for judicial cooperation in civil matters, whereby Coreper set up different ad hoc working parties to deal with specific subjects (e.g. Brussels II, notification, the European Enforcement Order or Rome II) could be abandoned if a standing Working Party on Judicial Cooperation in Civil Matters were to be set up, with a mandate to deal with specific topics, but also if necessary to act as coordinator for the various areas of judicial cooperation in civil

matters covered by Article 65 and Article 293 (ex Article 220) of the TEC<sup>1</sup>. A Working Party of this nature could also advise on questions of judicial cooperation in civil matters arising in other areas of the EC Treaty, such as provisions specifying the competent court and questions of applicable law in Directives.

- 3.2. In the field of asylum, immigration and external borders the following options have been considered by the Committee in order to ensure additional coordination, to relieve Coreper of the need to engage in detailed discussions on specialised questions, or to steer working groups as regards their day to day work :

**1st option:** no specific committee to be set up. The decision-making process would consist of three steps : working groups, Coreper, Council. <sup>2</sup>

**2nd option:** creation of a committee under Coreper solely for matters covered by Title IV TEC (except judicial cooperation in civil matters). Establishment and definition of the terms of reference would be carried out by Coreper.<sup>3</sup>

Given the fact that a five-year "transitional phase" is several times referred to in the EC Treaty as revised by the Treaty of Amsterdam, one might wish to limit the mandate of a newly established committee initially to a period of five years.

In addition, to ensure consistency of decisions in the first and third pillars, the procedures of this newly established body and of the Article 36 Committee could be coordinated as regards agendas and sequence of meetings.

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1 B is of the opinion that this standing Working Party on Judicial cooperation in Civil Matters has an exclusive coordination and programming function and that specific subjects could be dealt with in ad-hoc working subgroups.

2 The delegation of NL favours option 1. I has no final position. The delegations of S, FIN, and DK could accept option 1 or 2.

3 The delegations of ES, P, L, IRL, GR, B, D, A, UK, F favour this option.

4. The communitarisation of parts of the field of justice and home affairs and the integration of the Schengen acquis also calls for a fundamental review of the Council working parties operating in this area. To decide which working parties will continue to operate unchanged, which require a modification of their mandate and which should be newly set up, the action plan has laid down various principles (rationalisation and simplification, specialisation and responsibility, continuity, transparency and flexibility). The Presidency will submit a revised document based on the comments of the delegations on the proposals of the Presidency and the notes of the French and Belgian delegations (doc. 9836/4/98 Rev. 4 ADD 1, 5334/99 CK4 3, 5398/99 CK4 5).
5. In general, the structures of work in the field of justice and home affairs should be evaluated after an initial period in the light of practical experience, with a view to assessing the need for their continued application.

**II. Impact on the decision-making process and decision-making of the Protocol on the position of the United Kingdom and Ireland, the Protocol on the position of Denmark and the Protocol integrating the Schengen acquis into the framework of the European Union:**

These Protocols have as a consequence that, in the areas in respect of which these Member States have declared themselves not bound by the rules adopted by the Community, the members of the Council representing the Governments of these Member States do not take part in the adoption of Council measures.

The Protocols do not have the effect of modifying the existing Treaty provisions governing the composition of the Council, which will continue to consist of 15 members, nor of modifying the rules on the composition of committees or working parties of the Council.

In other words, delegations of Ireland, the United Kingdom and Denmark, will continue to participate fully in the work of working parties and Coreper, in all areas covered by Title IV TEC in its version of the Treaty of Amsterdam, it being understood that the taking of measures in the sense of the relevant provisions of that Title is not a matter for working parties or Coreper but for the Council. When it comes to the adoption of relevant measures in these areas, the Council will have to be aware that its members representing Ireland, the UK and Denmark do not participate in voting for their adoption.

Since Ireland, the UK and Denmark are entitled to participate fully in the discussions at all levels within the Council, this implies that delegations of these Member States can also fulfil the function of presidency in accordance with the applicable rules and practices within the Council.

The same considerations apply to the functioning of the Council, its committees and working parties in areas covered by the Protocol on the integration of the Schengen acquis into the framework of the European Union. According to this Protocol, the cooperation in respect of the provisions constituting the Schengen acquis and those building upon those provisions, in which 13 Member States may participate, takes place within the institutional framework of the European Union. However, it does not apply to Ireland and the United Kingdom (unless a decision to the contrary has been taken) and Community measures taken in this context will bind Denmark not as a matter of Community law, but as an obligation under public international law, subject to a declaration of acceptance to that effect.

When documents are submitted to the Council containing measures to be adopted in the field of justice and home affairs, it should be clear from the way in which each particular document is presented to the Council whether it concerns a matter involving measures in whose adoption the members of the Council representing Ireland, the United Kingdom and Denmark do not take part.

### **III. Implications of Schengen integration for the structure of Council working parties:**

Integration of the Schengen acquis into the framework of the European Union means that Schengen committees and working groups will cease to exist and that they will be absorbed by corresponding committees and working parties of the Council. Where necessary, the existing mandates of some working parties of the Council will have to be enlarged and in cases where no corresponding working parties of the Council exist, they will have to be set up in order to ensure the continued application of the provisions of the Schengen acquis and their further development. Reference is made to the Annex to this document containing a comparison between Schengen working groups and working parties of the Council.

As a result of the agreement to be concluded with Iceland and Norway on the basis of Article 6 of the Protocol integrating the Schengen acquis into the framework of the EU, work in the Council on the application and further development of the provisions of the Schengen acquis is to be organised in such a way that the association with Iceland and Norway is fully taken into account by means of the procedure set out in the agreement.

**The Presidency intends to take further action as follows:**

1. Coreper will be informed of progress in the discussion of structures of work in the field of justice and home affairs.
2. Taking into account the discussions of the Justice and Home Affairs Ministers and further analysis to be conducted under the responsibility of the Presidency, Coreper will determine on the basis of this document the mandates of existing JHA working parties which should be changed, the new working parties to be set up and the working parties to be abolished. This includes in particular the decision on the application of the 1st and 2nd options (see I.3.2 above).

In this context a decision will also be prepared on the setting up of a standing Working Party on Judicial Cooperation in Civil Matters.

Annex

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## Comparison between Schengen working parties and EU Council bodies:

A	B	C
SCHENGEN working groups/ subgroups/ad hoc groups	Existing EU Council bodies	New EU Council bodies to be set up
Executive Committee	JHA	-
Central Group	Coreper II Article 36 Committee	(New Steering Committee)
[...]	-	I
Standing Administrative Committee	-	-
Working Group I – Police and Security	-Council MDG -Council Police Cooperation Working Party -Council Customs Cooperation Working Party	-
Working Group II on Movement of Persons, Subgroup on Visas	Council Visa Working Party	-
Working Group III on Judicial Cooperation		Council Working Party on Cooperation in Criminal Matters
Working Group IV on External Relations	-	-
Working Group on Arms and Ammunition	-	-
Subgroup on Frontiers		Council Working Party on External Frontiers
Working Group on Telecommunications		Council Working Party on Telecommunications
"Crypto" Subgroup		Council Working Party on Telecommunications
Drugs Group	Council Horizontal Drugs Group	Council Working Party on Drugs and Serious crimes
Working Group on Treaties and Regulations	-	-
Working Group on Readmission	Council Working Party on Readmission	-
VISION Subgroup	Council Visa Working Party	-
SIS Working Group		Group on Information Systems Security
Permanent Working Party Schengen Information System		Permanent Working Party
SIRENE Working Group	-	SIRENE
Ad hoc SINFONE Working Group	-	-
Ad hoc SIA Management Subgroup	-	-
Ad hoc Data-exchange Subgroup	-	-
Ad hoc Working Group of Financial and Legal Experts	-	-
IRAQ Task Force	-	-
Schengen Evaluation Committee	Collective Evaluation (partly)	

## Other working parties (not Council working parties)

Joint Supervisory Body		JSB maintained as Schengen acquis
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