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LIMITE

CK4 3

NOTE

from : French delegation

to : ~~K4 Committee~~

Subject: Amsterdam Treaty: the European Union's working structures

The entry into force of the Amsterdam Treaty will have considerable consequences for the organization of working parties. There are two fundamental changes involved. Firstly, with the Communitarisation of checks at external borders, visas, asylum and immigration, and judicial cooperation in civil matters, the JHA field will be split between these subjects - which are transferred to the First Pillar - and police and customs cooperation and judicial cooperation in criminal matters, which remain under a "renewed" Third Pillar. Secondly, the incorporation of the Schengen *acquis* into the Treaty on European Union will necessitate a complete overhaul of Schengen and Union working structures.

There needs to be a reallocation of tasks between the working parties in an attempt to rationalize their work and to guide them in accordance with new prospects such as the development of operational cooperation between Member States. Reform of the working parties should be guided by a number of principles: simplification (not too many working parties and no overlap between them), specialization and responsibility (experts of appropriate seniority), continuity (as compared with the bodies already in place, so as to fulfil the Treaty's ongoing objectives), transparency (clear terms of reference and clearly defined relationships between working parties) and flexibility (scope for structures to be adjusted to deal with new problems or emergencies). Working parties will have to correspond to a particular need and to exist only so long as is necessary to fulfil their terms of reference, which must be clearly specified. This note merely sets out guidelines for the work to be done in each working party. Terms of reference will be set out in a further note.

The note only covers working parties and transversal working parties. It does not address the issues of management and coordination mentioned in the action plan for an area of freedom, security and justice. Regarding the institutional provisions, the French delegation would refer to the content of its note CK4/45 of 29 September 1998.

That note indicates that:

- The competence of the Council of Justice and Interior Ministers throughout the field of Justice and Home Affairs should be established.
- Title IV of the EC Treaty and the renewed Title VI of the TEU come within that sphere of competence.

Concerning matters coming under Title IV of the EC Treaty, the Treaty does not provide for the setting up of a specific coordinating body. France is in favour of such a body being set up by a Council decision, with responsibility for preparing the proceedings of the JHA Council. It would be set up for a transitional period which would last, on present reckoning, five years. It would allow Member States fully to exercise their right of initiative.

Regarding police cooperation and judicial cooperation in criminal matters, the future Article 36 Committee will provide the necessary forum for preparing the proceedings of the JHA Council.

There needs to be coordination between the work done under Title IV of the EC Treaty and that done under Title VI of the TEU.

VISAS, ASYLUM AND MIGRATION (FIRST PILLAR)

Working Parties to be retained

- *Visa*
This Working Party should take over the terms of reference of the existing EU Visa Working Party and the existing Schengen Working Group II (Visa). Thus, as well as matters concerning visas of less than three months' duration, it should cover all questions concerning the free movement of aliens (persons not entitled under Community law for a period of less than three months).
- *Asylum*
This Working Party should continue to play its current role. Its terms of reference should take over the relevant objectives set by Title IV of the Treaty establishing the European Community.
- *Frontiers*
The terms of reference of this Working Party should be extended to all frontier matters arising under the First Pillar, with the issues concerning "cooperation between frontier-policing services" (i.e. control and surveillance) being dealt with by a Third Pillar Working Party (see below). The Working Party should cover the external frontiers of both the European Union and the Schengen area, as well as internal borders.
- *Eurodac*
This Working Party is due to disappear once the Convention has been signed. Consequently there should be no need for its terms of reference to be adjusted when the Amsterdam Treaty comes into force.
- *CIREA and CIREFI*
The value of these bodies as fora for discussion and information exchange between experts is well established. Their terms of reference, which were recently adjusted, can remain as they are.

Working Party to be restructured

- *Migration*
This Working Party is currently divided into the Subgroup on Admission and the Subgroup on Expulsion. In view of the new problems presented by the new Title IV of the TEC, especially regarding long-stay visas, a clearer distinction needs to be made between these two areas by setting up two Working Parties.

The Working Party on Residence should deal with all questions relating to authorised long-term presence, i.e. "conditions of entry and residence, and standards on procedures for the issue by Member States of long term visas and residence permits" (Article 63(3)(a)), while the terms of reference of the Working Party on Expulsion should be extended to all issues covered by Title IV of the TEC concerning illegal immigration. It should also take over the work of Schengen Working Group II (Readmission).

Working Party to be transferred to the Third Pillar

- *False Documents*

This Working Party, which is responsible for developing cooperation between law-enforcement agencies dealing with criminal offences linked to illegal immigration, should become a Third Pillar Working Party. It could however be regrouped with the Frontier Police Working Party under Title VI of the TEU.

JUDICIAL COOPERATION IN CIVIL MATTERS (FIRST PILLAR)

Working Parties to be retained

- *Revision of the Brussels and Lugano Conventions*

The objective of this Working Party is the revision of these two Conventions concerning the EU and EFTA with regard to jurisdiction, recognition and enforcement of judgements.

- *Rome II*

This Working Party is charged with drawing up a legal act on the law applicable to non-contractual obligations.

Working Parties to be set up

- *Judicial cooperation in civil matters*

The action plan for an area of freedom, security and justice makes provision for examining the issue of the law applicable to divorce. This Working Party should begin by making a detailed study of the feasibility of a Regulation to prevent forum-shopping in the field of divorce. A Regulation would usefully supplement the work already done on the subject of the dissolution of the marriage bond with the Brussels II Convention. Secondly, the Working Party should be instructed to look at other civil matters not yet dealt with which have cross-border implications (TEC Article 65).

JUDICIAL COOPERATION IN CRIMINAL MATTERS (THIRD PILLAR)

Working Parties to be retained

- *Mutual assistance in criminal matters*

This Working Party has to complete the Convention on mutual assistance and draw up the Protocol to it.

- *Criminal and Community law*
This Working Party deals with punitive action against fraud, corruption and offences relating to the financial interests of the Communities. Its retention is justified by developments in the Community sector and improved protection for citizens against fraud affecting the financial interests of the Communities. In conjunction with the MDG on Organised Crime, it could be charged with studying the punitive aspects of prosecutions and penalties in connection with the forgery of the euro at European Union level.
- *Disqualification from driving*
This Working Party should complete the work involved in the EU Convention on Driving Disqualifications and, where appropriate, the Schengen work on cooperation concerning traffic offences.

The work in these areas could however be speeded up to avoid any need for the Working Party to be retained, even for a very short time, after the Amsterdam Treaty comes into force.

Working Parties to be set up

- *Judicial cooperation in criminal matters*
This Working Party would deal with the matters covered by Article 31 of the TEU and the practical aspects of judicial mutual assistance, after completion of the discussions of the Working Party responsible for drawing up the Convention on mutual assistance in criminal matters, with particular reference to matters concerning the operation of the European judicial network.
- *Criminal procedure*
This Working Party would be responsible for the procedural objectives set out in Article 31(c) and (d) (ex Article K.3) of the TEU: ensuring compatibility in rules applicable in the Member States, preventing conflicts of jurisdiction.
- *Approximation of charges and penalties*
This Working Party would correspond to the provisions of Article 31(e) (ex Article K.3) of the TEU: "progressively adopting measures establishing minimum rules relating to the constituent elements of criminal acts and to penalties in the fields of organised crime, terrorism and illicit drug trafficking".

POLICE AND CUSTOMS COOPERATION (THIRD PILLAR)

Working Parties to be retained

- *Terrorism*
Terrorism has to be seen as a specific problem that calls for monitoring by a specific Working Party, which would enable information services to exchange the relevant data, especially when it comes to making an assessment of the threat.

- *Police Cooperation (General)*
This Working Party would continue the work currently being done by the EU's Police Cooperation Working Party and the Schengen Working Group I on Police and Security (as well as by some of the latter's subgroups). The Working Party on Police Cooperation (General) should mainly concern itself with matters of security (law and order, urban violence, crime, etc.) and with the staff training and technical and forensic science services.

- *EUROPOL*
This Working Party should also be retained. Its task would be to prepare for the increase in the powers of the European Police Office, and in particular to ensure the effective application of Article 30 of the post-Amsterdam TEU. This Working Party's sphere of competence should be quite distinct from that of the EUROPOL Management Board which oversees the running of the European Police Office.

- *Customs cooperation*
This Working Party would cover the punitive aspect relating to the free movement of goods (fight against fraud) and have the task of providing the Union's customs authorities with punitive legal instruments to ensure the effective combating of fraud in the context of a single market. It would also develop joint methods and practices to guarantee an equivalent level of protection at all points of entry into the European Union. Another task would be to develop cross-border operational cooperation between the relevant services on the basis of common objectives.

- *SIS working parties*
The French delegation is of course entirely in agreement with the terms of reference that were established by SCHENGEN 44 REV 3 and "frozen" by COREPER for the three Council Working Parties (SIS, SIS-Technical and SIRENE) which are to succeed the three current SIS working groups. It has no proposals for amending them.

France considers that these working parties come under the Third Pillar.

Working Parties to be set up

- *Frontier police*
This working party would continue the work of the Subgroup on Frontiers attached to Schengen Working Group I on Police and Security. It should concentrate mainly on improving cooperation between law-enforcement agencies, especially in the field of illegal immigration.

Consideration should be given to the idea of merging this working party with the False Documents Working Party.

- *Organized crime and drug-trafficking*

This working party could deal with all forms of organized crime from the point of view of practical police cooperation. It could also continue the work of the Schengen Drugs Group and focus on the suppression of drug-trafficking, particularly by seeking an improvement in the operational cooperation between the relevant agencies.

TRANSVERSAL WORKING PARTIES

Working Parties to be retained

- *High-Level Working Party on Drugs*

This cross-Pillar Working Party was set up to direct and coordinate the European Union's work in the drugs field.

- *Multidisciplinary Group on Organised Crime*

This group should continue the implementation of the action plan to combat organised crime which runs until the second half of 1999. When its mandate expires, a decision will have to be taken on the group's future.

- *High-Level Working Group on Asylum and Migration*

This group was set up by the General Affairs Council on 7 December 1998. Its terms of reference are being negotiated.

- *Collective Evaluations Group*

This has the task of preparing and keeping up-to-date collective evaluations of the situation in the candidate countries on the enactment, application and effective implementation of the acquis of the Union in the JHA field.

The group should continue its work, which has the dual purpose of

- enabling the Commission to adjust the priorities and objectives of the accession partnerships;
- contributing on future discussions concerning enlargement.

- *Standing Committee on Implementation and Evaluation*

The question of incorporating the Standing Committee into the Union will be dealt with by the Working Party on the Schengen Acquis.

The Standing Committee is currently responsible for ascertaining that, where a State has applied for the Convention to come into force in its territory, the conditions for such entry into force have actually been met, and for ensuring that the Schengen acquis is properly applied by States that already apply the Convention.

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The attempt at rationalisation and simplification has led to a comparison being made between the number of working parties that currently exist in the European Union/Schengen context and those proposed in the post-Amsterdam configuration.

It emerges that the EU/Schengen working parties represent some 37 effectively functioning working parties (some are subgroups performing specific tasks, as in the Schengen Police Cooperation Working Group).

This note has referred to a total of 31 working parties, of which three are due to disappear in the near future (Disqualification from Driving, Mutual Assistance in Criminal Matters, Eurodac), bringing the total down to 28.

It is worth recalling that most of the working parties were set up for specific tasks that were liable to extend over a period of time, and that they will cease to exist once their terms of reference have been fulfilled.