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NOTE

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Subject: Report from the Justice and Home Affairs Council to the European Council

- Action plan in the field of Justice and Home Affairs

On 29 and 30 November 1993 the Justice and Home Affairs Council, meeting for the first time since its creation under the Treaty on European Union, set up the working structures provided for in the Treaty. It duly mandated those structures to carry out the tasks defined by it. The new institutional framework enabled the Council to take fully into account, in this restructuring, the connections and links existing between the various areas coming within its competence: free movement of persons, immigration and asylum, better protection of society against threats from terrorism and organized crime and the fight against drugs. These will be tackled with greater consistency.

The Council drew up a work programme for 1994 for all the areas within its responsibility.

This introductory note elaborates the six areas highlighted by the European Council at the meeting it held to mark the entry into force of the Treaty on European Union.

The European Council will find annexed hereto the action plan prepared specifically to meet its request, and will find the priority work programme, which was drawn up at the same time, in document 10684/93 JAI 12. While there is agreement on the substance of both the plan and the programme, the Spanish delegation has entered a general reservation on the points concerning asylum and a scrutiny reservation on matters relating to the Europol Drugs Unit (EDU) and Europol itself.

The principal components of the action plan are as follows:

- Europol and Europol Drugs Unit

Steps will be taken to speed up work in order to conclude the Convention before October 1994, as requested by the European Council. The Council also adopted recommendations to enable the Europol Drugs Unit effectively to start operations as early as 1 December 1993.

- Fight against drugs

In addition to the forthcoming start-up of the European Monitoring Centre for Drugs and Drug Addictions, the Council agreed to a global strategy to combat drug trafficking, to reduce demand and to act against producer and transit third countries, focusing on the strengthening of controls at external frontiers and on measures to counter "drug" tourism. The Council emphasizes the importance of an early transposition into national law of the Community Directive on money laundering and of close observance of the recommendations adopted on this matter in June 1993.

- Right of asylum

Bearing in mind the work already done under the work programme approved by the Maastricht European Council and the Resolutions approved by the Ministers responsible for immigration at their meeting in London, the Council agreed to prepare common action to ensure harmonized application of the definition of "refugee" within the meaning of the Geneva Convention and to define minimum guarantees concerning procedures for vetting asylum requests.

In addition, the Council, acting on the basis of a report from the Commission, carried out the mandate conferred on it by the Declaration in the Final Act of the TEU on asylum policy relating to Article K.9, a matter which the Council is to reexamine in the light of experience no later than the end of 1995.

- Visas

In this area the Council, after consulting the European Parliament, will act as soon as possible on the Commission proposals concerning the drawing up of the common list of third countries whose nationals require visas and, following the same procedure, will adopt measures for introducing a uniform visa format.

- Judicial co-operation

The Council adopted a declaration on extradition which will allow consideration of potential improvements in this field as regards both substantive conditions and procedures. It has already taken note of an interim report on this matter. A precise work plan was also adopted for reinforcing judicial co-operation in the drive against international organized crime.

The Council also approved an action plan to improve citizens' judicial security in civil matters.

- Link with the Union's external relations

The Council considered in each area how to exploit the possibilities of synergy between the policies pursued in the fields of Justice and Home Affairs and the CFSP.

This link has already been put to use in the field of drugs, where agreements with third countries contain specific drug-combating clauses. Concrete guidelines are also under study, notably as regards the re-admission of illegal immigrants by third countries.

Both this action plan and the work programme into which it fits will be implemented without delay and will permit immediate advantage to be taken of the potential afforded by the new Treaty.

The above package of measures will enable progress to be made towards the creation, in accordance with the provisions of the Treaty, of an area without internal frontiers thanks to satisfactory security arrangements, and a considerable boost to be given to co-operation between the Member States in these areas, to the benefit of the citizens of the Union.

ACTION PLAN

	<u>Page</u>
I. Asylum and immigration	6
II. Police and customs co-operation	8
III. Judicial co-operation	14

I. ASYLUM AND IMMIGRATION

Action plan

requested by the European Council

on 29 October 1993

The Treaty on European Union numbers asylum policy as one of the matters of common interest (see Art. K.1(1)). The Governments of the Member States of the European Union have been co-operating in this area since 1986. Since then, many important steps have been taken towards harmonizing asylum policy.

Particular mention should be made of:

- the Dublin Convention of 15 June 1990 and the proceedings concerning its implementation;
- the report from the Ministers responsible for immigration and asylum and the work programme on asylum which it contains, approved by the Maastricht European Council on 3 December 1991;
- the Resolutions adopted by the Ministers with responsibility in this area on 30 November 1992 in London.

In addition, a Centre for Information, Discussion and Exchange on Asylum (CIREA) has been established, designed to guarantee a continuous and detailed exchange of information on all aspects of asylum policy.

These results show that the Member States have mutual confidence in their respective asylum policies. This applies in particular to the Dublin Convention. Each Member State accepts that an application for asylum submitted on its territory which it has declared inadmissible may be examined by another Member State in accordance with the national law of that State. These provisions of the Dublin Convention are based on mutual recognition by Member States of decisions taken on applications for asylum.

In order to increase the mutual confidence of the Member States and to ensure acceptance of this policy by the public, it will be necessary for asylum applications to be dealt with in accordance with specific harmonized criteria and equivalent procedures.

The Council therefore considers that common action on asylum be prepared as a matter of priority, to arrive at harmonized application of the definition of "refugee" in Article 1A of the 1951 Geneva Convention and a definition of minimum guarantees in the procedure for examining asylum applications. The action will aim at overall harmonization of asylum policy, taking account of the results obtained to date.

As regards visas, the Council will take a decision as soon as possible, after consulting the European Parliament, on the Commission proposals concerning the establishment of the common list of third countries whose nationals require visas. It will also adopt, by the same procedure, measures concerning the introduction of a standard visa.

As regards incorporation of asylum and immigration policy objectives in external relations, it was suggested that:

- principles be adopted which must appear in bilateral and multilateral readmission agreements;
- a link be established where appropriate between Europe association and co-operation agreements concluded by the Community and its Member States and the practices of third countries regarding readmission.

II. POLICE AND CUSTOMS CO-OPERATION

Action plan

on drugs, Europol and money laundering

1. OVERALL ASPECTS

- A. Only overall and multidisciplinary action enables the scourge of drugs to be combated effectively. This approach is reflected in the action plan which was adopted by the European Council on 13 and 14 December 1990 in Rome, as well as in its revised version approved by the European Council in December 1992 at Edinburgh.

This approach also serves as a basis for the texts adopted within the framework of the United Nations, including, most recently, the Resolution adopted on 28 October 1993 in New York by the General Assembly of the United Nations.

The structures established by the Treaty on European Union should allow for greater synergy and coherence of the actions governed by the provisions of its various pillars.

- B. In order to ensure the overall nature and coherence of the action against drug trafficking and abuse, the Council stresses:
- the importance of the ratification by all Member States of the United Nations Conventions in matters of drugs and the 1990 Council of Europe Convention on Laundering the Proceeds from Crime;
 - the need to avoid duplication and to strive for adequate co-operation in particular between:
 - . the European Drug and Drug Addictions Monitoring Centre and EDU, and, at a later stage, Europol, in accordance with the specific tasks entrusted to them;
 - . the implementation of the Community Directive on money laundering and co-operation between Member States, in particular as regards co-ordination and the exchange of information;
 - . the activities of the Union and the Dublin Group;
 - the need to ensure that the European Plans to Combat Drugs mentioned above are implemented.

The Council also stresses the need for Member States:

- to transpose the Council Directive on the prevention of use of the financial system for the purpose of money laundering rapidly into their own national laws. This transposition should have taken place by 1 January 1993 at the latest;
- to transpose rapidly the Council Directive on manufacturing and marketing precursors. This transposition should have taken place before 1 July 1993;
- to take the measures necessary to set up the Drugs Monitoring Centre.

2. MEASURES

A. Europol, the Europol Drugs Unit (EDU) and European Drugs Monitoring Centre

(i) Europol

Work has enabled agreement in principle to be reached on a substantial number of points. The examination of major issues in particular should be expedited with a view to concluding the Convention in October 1994. Priority must be given to data protection rules.

Among the other major issues in abeyance, work should be focused on:

- defining the forms of crime Europol may have to cover;
- defining the role of national units;
- determining the responsibilities of Europol with regard to the structures established by the Treaty on European Union.

(ii) Europol Drug Unit (EDU)

Concerning the Europol Drugs Unit (EDU), following the entry into force on 30 October 1993 of the ministerial agreement of 1 and 2 June 1993 on its establishment, the Council asks EDU to carry out, without delay, the tasks entrusted to it in accordance with the ministerial agreement of 1 and 2 June 1993.

(iii) European Drugs Monitoring Centre

Given the extent of the drugs scourge, and in view of the need for reliable data, the Council requests that all the necessary measures be taken for setting up the European Monitoring Centre for Drugs and Drug Addiction as soon as possible.

B. Effective measures to combat drugs, including measures to counter the laundering of profits from illegal activities

(i) General

The Council considers that all forms of police and customs co-operation must be developed in order to attain the common objective of greater security for the Union's citizens.

(ii) Police and customs co-operation

To strengthen police and customs co-operation, a strategy to combat illicit drug trafficking needs to be set up, including the extension of checks at external frontiers as well as measures against "drug-tourism".

To that end, the Council considers that the following measures must be taken:

- (a) implementation of the report on customs strategy at external frontiers, adopted by the Directors-General of Customs on 29 May 1993;
- (b) finalization of the Convention on the Customs Information System as quickly as possible, and by 30 June 1994 at the latest;
- (c) stepping up maritime operational controls and maritime co-operation, taking into account the work of the Pompidou Group and of the European Committee on Crime Problems (CDPC) in drawing up an agreement for the implementation of Article 17 of the 1988 Convention and proposals with a view to setting up a maritime co-operation working party at the United Nations;
- (d) rapid completion of work on the Convention on the European Information System;

- (e) development of close co-operation with the police and customs of the Union's neighbouring States;
- (f) improving, as part of the Matthaeus programme, the arrangements for the exchange and training of customs officers.

(iii) Money laundering

- (a) The Council reaffirms the importance of the recommendations on money laundering adopted at the ministerial meeting on 1 and 2 June 1993 and recommends that their implementation be carefully monitored with a view to sending a report to the June 1994 Council.
- (b) The Council:
 - stresses the desirability of training members of law enforcement agencies in this field; to that end, a training module will be produced in early 1994;
 - reaffirms the importance of exchanging police and customs information in this area, in particular by means of rapid, effective co-operation between central contact points in the Member States;
 - invites the competent authorities to take account in their discussions of the measures now being drawn up within the GAFI.

(iv) Other measures

- (a) Establishment of a central scientific collection system based on the technical analysis of drugs seized in Europe.
- (b) Exploratory across-the-board consideration by the law enforcement agencies, in conjunction with social and medical experts, of petty crime in urban areas linked to drugs consumption, the classification of drugs and the use of substitutes.

C. External relations of the Union in drugs matters

- (i) The Council welcomes the development of co-operation links between the Community and its Member States on the one hand, and third countries on the other, in the field of drugs.

These links are reflected in particular in co-operation agreements, notably with the Asean and Rio Group countries, and the association agreements with the countries of Central and Eastern Europe.

- (ii) The clauses on drugs in the Association Agreements which have been concluded with Poland, Hungary, the Czech Republic, Slovakia, Romania and Bulgaria provide for co-operation in the area of supply, illicit traffic in and reduction of demand for narcotic drugs and psychotropic substances, and on preventing the diversion of precursors and other important substances used for the illicit manufacture of drugs. These Agreements also contain provisions on money laundering.
- (iii) The Council considers that a global co-operation strategy should be developed with certain producing and/or transit countries situated at the Union's eastern or Mediterranean borders.
- (iv) As regards Central and Eastern European countries, the approach should take into account the work carried out within the framework of the Community PHARE programme and by the former TREVI, particularly in matters of training ⁽¹⁾ and the activities of the Dublin Group, in particular its local groupings for Central and Eastern Europe and for the Balkans/Near East, in association with the specific tasks entrusted to UNDCP.

The Council stresses the importance of including clauses of the type provided for in the negotiating brief for the partnership and co-operation agreement with Russia in future agreements with these countries, and if possible with other third countries.

- (v) As regards Morocco, the action to be taken must be in keeping with the approach in the Commission communication and the draft negotiating directives.

⁽¹⁾ Cf. police training seminar held in Ysermonde from 11 to 22 October 1993.

- (vi) With regard to the Andean countries, the Council confirms its support for those countries' action in combating drugs. In this connection the possibility of renewing the Andean tariff preferences (Andean GSP) will be considered in the months ahead with a view to a firm decision before the present system expires, in the light of progress achieved.
- (vii) Finally, it is important that Member States should present properly co-ordinated positions at the second pan-European Conference organized by the Pompidou Group.

III. JUDICIAL CO-OPERATION

Action plan
in response to the request from
the European Council on 29 October 1993

CRIMINAL MATTERS

The European Council voiced the concern that the policy of the Union on sensitive issues of justice and home affairs should provide citizens not only with the assurance that the creation of an area without frontiers will not be achieved at the expense of their security, but that the latter will be guaranteed more effective in future thanks to this systematic co-operation organized between the Member States.

It is with this in mind that the Council has prepared a precise action plan on strengthening judicial co-operation with particular reference to extradition.

1. Extradition

As regards extradition, which is an essential form of judicial co-operation between Member States relating both to the prosecution of criminal acts and to the enforcement of penalties, the Council considers that the examination of possible improvements in this area is a matter of priority for its work in criminal matters.

The Council considers that this examination should be carried out in accordance with the mandate laid down in the declaration on extradition adopted on 28 September 1993 in Limelette.

This examination will deal with the substantive and procedural aspects of extradition, and will aim at improving the effectiveness of judicial co-operation within the Union to the fullest extent compatible with the fundamental principles of Member States' national laws.

As to the first aspect, the examination will deal with the conditions and grounds for refusing extradition, including the reservations expressed by Member States when ratifying the European Convention on extradition. It will cover in particular the conditions relating to:

- extraditable offences,
- political offences,
- fiscal offences,
- lapse of time,
- extradition of nationals,
- life sentences,
- the speciality rule.

As regards the second aspect, the examination will deal with the means for simplifying and accelerating extradition procedures, on the basis of discussions relating to the conditions and grounds for refusing extradition. It will cover in particular measures aimed at:

- simplifying, at least in some cases, the judicial control over the decision to extradite;
- simplifying the procedure where the person agrees to be extradited.

The Council asks for a report on all these issues by the end of 1994.

2. Co-operation in the fight against international organized crime

Besides extradition, the Council considers that one area in which judicial co-operation between Member States has to be intensified as a matter of priority within the framework of an area without internal frontiers and with a view to the security of citizens is action against international organized crime.

The Ministers of Justice and Home Affairs discussed this issue of action against international organized crime at an extraordinary meeting on 18 September 1992 in Brussels. They adopted conclusions on this subject at their meeting on 6 and 7 May 1993 in Kolding and at the Council meeting on 29 and 30 November 1993 in Brussels.

The Council considers that action should be taken on the conclusions on judicial co-operation contained in the report of the ad hoc Working Group on International organized crime adopted by the Council on 29 and 30 November 1993 (9908/2/93 CRIMORG 1 REV 2 + ADD 1), in particular those relating to:

- the possibility of introducing a common offence regarding international organized crime or, as an alternative, of simplifying the conditions for judicial co-operation on international organized crime;
- the possibility of providing for criminal sanctions against legal persons in connection with offences relating to international organized crime;

- the laundering and confiscation of proceeds from offences and, in particular:
 - . the ratification of the Council of Europe Convention of 8 November 1990 on laundering, tracing, seizure and confiscation of proceeds of crime;
 - . the enforcement of Directive 91/308/EEC of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering;
 - . the possibility of confiscating proceeds from offences regardless of whether their perpetrator is convicted;
- mutual judicial assistance regarding the execution of letters of request relating to modern forms of investigation, such as interception of communications and telecommunications.

CIVIL MATTERS

- . With a view to carrying out the objectives of the Union, the Treaty on European Union has determined that judicial co-operation in civil matters is one of the matters of common interest (Article K.1).

The entry into force of the Treaty opens up new prospects for the European citizen. In particular, Union citizenship has been established for which any person having the nationality of a Member State is eligible. Moreover, other conditions have been laid down in order to allow the citizen to move more easily within the area of the Union.

This exercise requires additional work to be carried out in respect of certain aspects of the citizen's family life which may result, possibly in a large number of cases, from this opening up of the area of the Union.

It is with this in mind that the Council deems it necessary to examine the desirability of strengthening judicial co-operation in civil matters, as requested by the European Council on 29 October 1993.

To that end, the Council considers that this examination should be actively pursued in two specific fields:

- consideration of the possibilities of extending the scope of the Brussels Convention to family matters and succession;
- the establishment of an instrument aimed at simplifying and accelerating the procedures for the transfer of documents between Member States.