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1808TH COUNCIL MEETING - JUSTICE AND HOME AFFAIRS - BRUSSELS, 30 NOVEMBER AND 1 DECEMBER 1994 PRESIDENTS: - MRS SABINE LEUTHEUSSER-SCHNARRENBERGER, MINISTER FOR JUSTICE - MR MANFRED KANTHER, MINISTER FOR THE INTERIOR OF THE FEDERAL REPUBLIC OF GERMANY

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The Governments of the Member States and the European Commission were represented as follows:

Belgium	
Mr Melchior WATHELET	Deputy Prime Minister, Minister for Justice
Mr Johan VANDE LANOTTE	Minister for the Interior
Denmark	
Mr Bjoern WESTH	Minister for Justice
Mrs Birte WEISS	Minister for the Interior
GERMANY	
Mr Manfred KANTHER	Minister for the Interior
Mrs Sabine LEUTHEUSER-SCHNARRENBERGER	Minister for Justice
Mr Kurt SCHELTER	State Secretary, Ministry of the Interior
Mr Alwin ZIEL	Minister for the Interior, Brandenburg
Greece	
Mr E. ROGAKOS	Secretary-General, Ministry of Public Order
Spain	
Mr Juan Albert BELLOCH	Minister for Justice
France	
Mr Pierre MEHAIGNERIE	Ministre d'Etat, Minister for Justice
Ireland	
Mr Pádraic MAC KERNAN	Ambassador, Permanent Representative
Italy	
Mr Maurizio GASPARRI	State Secretary, Ministry of the Interior
Mr Domenico CONTESTABILE	State Secretary, Ministry of Justice
Luxembourg	
Mr Marc FISCHBACH	Minister for Justice

Netherlands	
Mrs Winnifred SORGDRAGER	Minister for Justice
Mr Henri Frans DIJKSTAL	Minister for the Interior
Portugal	
Mr Álvaro LABORINHO LÚCIO	Minister for Justice
Mr Manuel DIAS LOUREIRO	Minister for the Interior
UNITED KINGDOM	
Mr Michael HOWARD	Home Secretary
Mr Nicholas BAKER	Parliamentary Under-Secretary of State, Home Office

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Commission	
Mr Pádraig FLYNN	Member

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The following attended the meeting as observers representing the acceding countries:

Austria	
Mr Nikolaus MICHALEK	Federal Minister for Justice
Finland	
Mrs Anneli JÄÄTTEENMÄKI	Minister for Justice
Mr Mauri PEKKARINEN	Minister for the Interior
Sweden	
Mrs Laila FREIVALDS	Minister for Justice
Mr Leif BLOMBERG	Minister for Immigration

EUROPOL

The Council had before it a progress report, submitted by the Presidency, on the establishment of Europol, showing that substantial progress had already been made on many major aspects of the Convention. However, a number of problems were still outstanding at that stage on other key aspects of the Convention.

The Council examined in detail the problems in abeyance on the one hand with regard to the architecture of the system, particularly the question of access to data and their use, and on the other hand as to the areas of international crime on which Europol's activity should be targeted and whether certain areas - especially terrorism - could be included from the outset.

At the end of the discussion the Council recorded that it could not at that stage reach unanimity on those aspects. It therefore instructed its preparatory bodies to continue work on those problems and on certain institutional aspects arising from the Convention, viz.: role of the European Parliament, auditing by the Court of Auditors and legal means of redress - including the role and jurisdiction of the Court of Justice - with a view to seeking solutions under the French Presidency.

The President stated that he would be submitting a progress report on the subject to the European Parliament, and reserved the right to raise political aspects giving rise to problems.

EDU/EUROPOL MANAGEMENT TEAM

The Council adopted the following decisions on the composition of the EDU/Europol management team:

- Mr Willy BRUGGEMANN (B) and Mr Georges RAUCHS (L) were appointed Assistant Coordinators;

- Mr Emanuele MAROTTA (I) and Mr David WALLS-RUSSEL (UK) were appointed members of the Steering Committee

for the period from 1 January 1995 to 31 December 1997 or until the Europol Convention entered into force.

It will be recalled that the Coordinator, Mr Jürgen STORBECK (D), had already been appointed.

ADMISSION AND RESIDENCE OF DISPLACED PERSONS

The Council took note of a Presidency progress report on admission to and temporary residence in the Member States of displaced persons, with particular reference to the problem of burden-sharing.

It held a general discussion on the subject, enabling delegations to state their views on certain aspects, in particular as regards the criteria to be applied for burden-sharing with regard to the admission of displaced persons. Commissioner FLYNN stated that the European Parliament had recently created a budget heading for 1995 which could constitute the nucleus for setting up a fund to help temporarily displaced persons.

In conclusion, the Council instructed the Permanent Representatives Committee and the K.4 Committee to continue discussing the matter and to report to it at a forthcoming meeting.

TRAVEL FACILITIES FOR SCHOOL PUPILS

The Council adopted the Decision on a joint action concerning travel facilities for third-country school pupils resident in a Member State. This is the first joint action adopted on the basis of Article K.3(2)(b) of the Treaty on European Union in the JHA field.

It is provided that a Member State will not require a visa of a school pupil who is not a national of a Member State but who is resident in another Member State - either for a short stay or transit - if, in the framework of a school excursion, he is travelling as a member of a group of school pupils from a general education school and if the group is accompanied by a teacher who has a list of the names of the school children (drawn up on a common form) documenting the purpose and circumstances of the trip.

ASYLUM APPLICATIONS/MINIMUM GUARANTEES

The Council had before it a draft Resolution defining minimum guarantees to be provided in the context of the procedures for examining asylum applications. At its meeting on 29 and 30 November 1993 it had been felt that such a measure should be a priority for 1994 in the asylum field.

However, the Council was unable, at this stage, to resolve the problem raised by one delegation concerning the processing of asylum applications submitted by nationals of Member States in the framework of the provisions on manifestly unfounded asylum applications.

The Council accordingly instructed the Permanent Representatives Committee, assisted by the K.4 Committee, to continue work on the Resolution as rapidly as possible.

UNIFORM FORMAT FOR VISAS

The Council took note of a progress report on the draft Regulation laying down a uniform format for visas and recorded that substantial progress had been made.

Pending the European Parliament's Opinion, the Council instructed the Permanent Representatives Committee, assisted by the K.4. Committee, to continue its work on the questions outstanding with a view to adoption of the Regulation as early as possible in 1995.

The Treaty on Union (Article 100c) stipulates that the Council is to adopt measures relating to a uniform format for visas before 1 January 1996, as one of the accompanying measures necessary for the implementation of the free movement of persons. Proceedings on the matter have taken account of the results already achieved within Schengen.

The uniform format will need to have the following characteristics: it should contain the necessary information and meet very high technical standards, notably as regards safeguards against counterfeiting and falsification, be well adapted for use by all the Member States and bear universally recognizable security features which are clearly visible to the naked eye.

FURTHER IMPROVEMENT IN SECURITY AT EXTERNAL BORDERS

The Council noted that there were still reservations on the draft Resolution on the further improvement in security at the external borders of the Member States, while recording that there was consensus on the rest of the text.

The reservations concern whether to incorporate in the recitals or in the enacting terms a provision on the greater pressure to which some Member States are subject owing to their geographical position.

The Council instructed the Permanent Representatives Committee, with the assistance of the K.4 Working Party to seek a solution enabling those reservations to be withdrawn.

1994 BUDGET - MEASURES TO BE TAKEN IN THE JHA SECTOR

The Council examined a draft Decision on a joint action concerning cooperation measures to be taken in the JHA sector in order to use at least part of the appropriations for that purpose entered in the Community budget by the European Parliament for the financial year 1994 (ECU 2 million).

Having noted that there were still objections, notably of a legal nature, to the draft Decision, the Council instructed the Permanent Representatives Committee, with the assistance of the K.4 Committee, to hold the necessary discussions in the very near future on the financing of the JHA sector in order to lay down general rules so that the appropriations available could be used in 1995 on an indisputable legal basis.

RELATIONS WITH THIRD COUNTRIES IN THE JHA FIELD

The Council adopted conclusions on relations with third countries in the JHA field, laying down guidelines for continuing and developing countries with those countries.

Such countries have already existed for some time between the EU Troika and the United States, Canada, Switzerland and Morocco, and have more recently been established with the CCEE.

With more particular reference to implementation of the Berlin Declaration on Increased Cooperation in Combating Drug Crime and Organized Crime in Europe adopted at the Conference with the CCEE on 8 September 1994, the Council approved a list of priority proposals. The list includes measures relating to police and customs cooperation (administration, training, equipment, data processing, exchanges of information), measures in the

immigration field (combating the use of false documents, visa problems) and judicial cooperation (theft of and illegal traffic in nuclear material, trade in stolen vehicles, key Council of Europe conventions, mutual judicial assistance).

RELATIONS WITH CYPRUS AND MALTA

The Council agreed that a meeting between the Troika and Cyprus and Malta would be organized by the French Presidency in the first half of 1995.

FIGHT AGAINST RACISM AND XENOPHOBIA

The Council took note of an interim report on work in the JHA sector on combating racism and xenophobia, in accordance with the conclusions of the Corfu European Council, and approved the guidelines agreed on to date.

The interim report will be sent to the European Council.

During the discussion on the subject delegations had an opportunity to specify the fields which warranted special attention in further proceedings. The final outcome of such proceedings will have to be submitted for the JHA meeting in March 1995 for subsequent incorporation in the Union's draft global strategy to be adopted by the European Council in June 1995. The findings of the Consultative Commission set up by the Corfu European Council are also to be incorporated into that global strategy.

CAMPAIGN AGAINST INTERNATIONAL ORGANIZED CRIME

The Council took note of an interim report on cooperation in the campaign against international organized crime (IOC). The Brussels European Council in December 1993 stressed the importance of strengthening judicial cooperation in this sector. The purpose of the work done in 1994 was to examine how to implement the conclusions of the report drawn up by the ad hoc Working Party on IOC as adopted by the Council on 29 and 30 November 1993.

The Council conducted a policy debate on further work in this area, in the course of which several Ministers stressed the need to achieve specific results (e.g. as regards offences by criminal organizations, mutual judicial assistance, the problems posed by the new telecommunications interception systems, witness protection).

In that context the Council also drew attention to the impetus given to international cooperation in this field by the recent World Ministerial Conference in Naples on Organized Transnational Crime.

PROTECTION OF THE FINANCIAL INTERESTS OF THE COMMUNITIES

The Council took note of progress in work on the protection of the financial interests of the Communities carried out since its previous meeting, in June. It adopted a Resolution on criminal sanctions, in line with the request by the Corfu European Council that the JHA Council reach agreement on tackling the criminal aspects of fraud and report back to it at its meeting in Essen.

The Council gave instructions that work should press ahead on that basis so that a draft legal instrument could be submitted to the Council as early as possible in 1995. To that end it already has on the table a draft Decision on a joint action put forward by the United Kingdom and a Commission proposal for a Convention.

CONVENTION TO IMPROVE EXTRADITION BETWEEN THE MEMBER STATES OF THE EUROPEAN UNION

In the context of its discussions on the Convention the Council noted that

substantive agreement had been reached on the chapter relating to simplified extradition procedures in the event of the consent of the person concerned.

The Council accordingly instructed the Permanent Representatives Committee, with the assistance of the K.4 Committee, to finalize the text of a convention on simplified procedures with a view to its adoption in the first half of 1995.

It also instructed those Committees to press ahead with their work on the other aspects of extradition problems, taking into account the special constitutional problems arising in some Member States.

BRUSSELS II CONVENTION - JURISDICTION AND THE ENFORCEMENT OF JUDGMENTS IN MATRIMONIAL MATTERS

The Council held a policy debate on the extension of the scope of the Brussels Convention on jurisdiction and the enforcement of judgments to cover certain matters concerning family law.

At its meeting in June the Council agreed to deal, within the framework of the Union, with procedures concerning divorce and legal separation as well as those concerning marriage (existence, annulment and effects), while not neglecting related questions such as contractual aspects of marriage.

The draft Brussels II Convention submitted by the Presidency relates in particular to the scope, jurisdiction of courts, recognition and enforcement of decisions concerning marriage.

The Council's discussion centred on the scope of the future Convention and revealed that a majority of delegations was in favour of also including questions relating to custody.

The Council wanted its preparatory bodies to do all in their power to achieve specific results on the draft Convention before the end of the first half of 1995.

ACTION PLAN IN THE JHA FIELD

The Council approved a report on the implementation of the action plan in the field of Justice and Home Affairs approved by the Brussels European Council in December 1993.

This is the first report of its kind, and it will be forwarded to the Essen European Council in line with the December 1993 request.

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The Council postponed its examination of the Convention on insolvency proceedings until a forthcoming meeting.

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MISCELLANEOUS DECISIONS

(Adopted without discussion)

Admission for study purposes

The Council adopted a Resolution on the admission of third-country nationals to the territory of the Member States of the European Union for study purposes, the text of which is set out in Annex I.

Limitations on admission for the purpose of pursuing activities as

self-employed persons

The Council adopted a Resolution relating to the limitations on the admission of third-country nationals for the purpose of pursuing activities as self-employed persons, the text of which is set out in Annex II.

Measures to combat drug-related crime and organized crime

The Council approved the 1994 report from the Working Party on Drugs and Organized Crime on the measures to combat drug-related crime and organized crime, on the understanding that the main points would be incorporated into the report on the implementation of the action plan to be submitted to the Essen European Council.

The report covers three fields: combating drug-related crime, combating organized crime (e.g. traffic in human beings, especially prostitution, transboundary transfer of stolen motor vehicles, environmental crime, radioactive products and works of art, money laundering) and cooperation with the States of Central and Eastern Europe (e.g. need for training projects, exchanges of experience).

Police cooperation

In connection with cooperation in the area of public order the Council approved a Recommendation for the exchange of information on the occasion of major events or meetings. Under that Recommendation any Member State within which an event is to take place should be able to call upon advisers from the other Member States for the purpose of direct exchanges of information.

The Council also outlined an approach providing, in the framework of enlarged and strengthened relations with third countries, in particular the countries of Central and Eastern Europe, for exchanges of information in the area of international sports events.

It also approved guidelines for the training of police officers, and in particular the training of instructors.

CIREFI

The Council adopted conclusions on the organization and development of the Centre for Information, Discussion and Exchange on the crossing of frontiers and immigration, the text of which is set out in Annex III.

Data protection - EIS, CIS and Europol

The Council approved a report on the data protection provisions in the various instruments provided for the setting up of computerized systems - European Information System (EIS), Customs Information System (CIS) and Europol draft Conventions. The report will be submitted to the Essen European Council.

Implementation of Article K.5 (Defence of common positions in international organizations and at international conferences)

The Council agreed on certain rules applicable to the defence and preparation of common approaches to be adopted by the EU in international organizations and at international conferences with regard to the JHA field.

Relationship between Community law and criminal law

The Council took note of an addition to the report, submitted to the JHA Council at its meeting in November 1991, concerning the relationship between Community law and criminal law. The update ensues from a judgment

delivered by the Court of Justice in October 1992 relating to the extent to which the Community institutions are empowered to impose criminal sanctions through the agency of Member States' authorities.

Standard travel document for the removal/expulsion of third-country nationals

The Council adopted a Recommendation concerning the introduction, as from 1 January 1995, of a standard travel document to be used as necessary by all Member States of the Union in the event of third-country nationals being expelled from the territory of the Union and not possessing a travel document.

Risk analysis

The Council took note of a progress report regarding the potential risk of terrorism.

Bilateral readmission agreement

The Council adopted a Recommendation concerning a specimen bilateral readmission agreement between a Member State of the European Union and a third country.

The specimen readmission agreement should be used flexibly by the Member States and may be adapted to the particular needs of the contracting parties. The Recommendation provides that, as from 1 January 1995, the specimen agreement will be used as a basis for negotiations with third countries on the conclusion of readmission agreements.

Customs fraud

The Council noted a contribution, referred to it by the Working Party on Customs Coordination, to the development of a strategic plan of the European Union to combat customs fraud in the internal market, pointing out that the abolition of controls linked to the crossing of internal borders has increased the potential risk of fraud and that the nature of fraud has become more international, thus calling for closer cooperation.

The document covers the following areas in particular: information exchange, controls and other measures to tackle fraud, deployment of resources to the best effect, liaison between the national and EU-wide bodies concerned with combating fraud, and training and the need for harmonization of legal and administrative provisions.

ANNEX I

COUNCIL RESOLUTION
on the admission of third-country nationals
to the territory of the Member States of the European Union
for study purposes

A. GENERAL CONSIDERATIONS

1
The Council recalls that, in the report adopted by the Maastricht European Council (December 1991) from the Ministers responsible for immigration and asylum policy, priority was given to the harmonization of rules for the admission of students from third countries. In the 1994 programme of work on Justice and Home Affairs, which the Council approved at its meeting on 29 and 30 November 1993 in Brussels, the completion of work on the admission of students was also given priority status.

2
The Council confirms that the international exchange of students and academics is desirable; it acknowledges that the education of students and the exchange of academics have positive implications for relations between the Member States and the States of origin.

3
The Council agrees that, at the end of their studies, students must in principle return to their countries of origin so that the knowledge and skills they have acquired are made available to those countries.

4
The Council considers it is important to ensure that the admission of third-country nationals to study in the Member States for a limited period, in principle does not turn into permanent immigration. Similarly, the Council considers it is necessary to devise suitable systems to prevent those who are mainly seeking employment from receiving authorization to stay on as students.

5. The Council agrees not to regulate via this Resolution the issue of third-country nationals lawfully resident on a permanent basis in the territory of a Member State, but who have no right of admission and residence in another Member State.

   This does not affect the position of third country nationals who are already covered or who may, in the future, be covered by bilateral agreements between the Member States regarding cooperation between institutions of higher education.

6. The Council agrees that Member States' national policies on the admission of third-country nationals for study purposes must be governed by the principles set out below, which may not be relaxed by Member States in their national legislation.

   The Council agrees that these principles have to be taken into account whenever any change is proposed to national legislation on the subject.

   The Member States should seek to ensure that by 1 January 1996 national law is in conformity with these principles. The principles are not legally binding on the Member States and do not afford a ground for legal action by the individual.

7. The Council agrees that there shall be a regular review of the transposition of this Resolution and of the need for amendments to it.

8. The Member States should facilitate the admission and residence of students from third countries within the framework of special cooperation programmes, the financing of which is secured at national or Community level.

9. Application of the said principles does not prevent application of national rules on public policy, public health or safety.

B. PERSONS EXEMPT FROM THE SCOPE OF THIS RESOLUTION

The principles of harmonization will not apply to:

- individuals who enjoy the right of freedom of movement under Community law, i.e. nationals of the Member States, nationals of the EFTA States which are parties to the Agreement on the European Economic Area and members of their families;

- third-country nationals who have been admitted for the purposes of

family reunification to take up residence with nationals of a Member State or third country who reside in the Member State in question.

C. PRINCIPLES BY WHICH THE POLICIES OF THE MEMBER STATES WILL BE GUIDED

1. General criteria

Within the meaning of these principles, a student is a national of a third country admitted by a State or State recognized higher education institution or a comparable institution in a Member State of the European Union in order to:

- take up a course of study;

- study for a doctorate or;

- pursue academic activity following a course of higher education within the framework of further study or training, and the earning of income is not the principal aim.

It should also be noted that for the purposes of this resolution school pupils and apprentices are not included.

For the purpose of this Resolution a person who participates in a course aimed at preparing for a specific course of university studies (eg providing language training) shall also be deemed to be a student.

2. Requirements for admission

A national of a third country who requests admission as a student will have to prove to the competent authorities of the Member State that he/she:

- fulfils all the requirements applicable to foreigners as regards entry and stay in the territory of the Member State;

- has a firm offer of admission to a State or State-recognized higher education institution or a comparable institution appropriate to his/her studies for a course of study as a main activity and if so required by national legislation that this offer concurs with requirements made by the competent immigration authorities.

  Member States may also request proof of continuity between previous studies and studies to be undertaken in the host country;

- has the financial means required to support the cost of his/her studies and subsistence for himself/herself so that during his/her stay the student does not need to claim social assistance in the host Member State and the earning of an income is not the principal aim;

- if required by national legislation,has health cover for all risks in the host Member State.

A Member State may also require the student to satisfy the immigration authorities that he/she would return to his/her own country on completion of studies.

A Member State may permit persons to enter who are interested in preparing their application for studies in the respective State or who can demonstrate a genuine and realistic plan for undertaking a course of study. It may be permitted for the person concerned not to have to leave the country in order to obtain an extension of

his/her authorization to stay.

Nationals of third countries who entered the Member States with the aim of working there in an employed or self-employed capacity shall on the basis of this Resolution not be admitted in principle to engage in study as a main activity.

3. Authorization to reside

The duration of residence is limited to the length of the course.

The length of the course is dictated by the duration of studies in the chosen subject. At the end of the course of study, or if the student abandons his/her studies, authorization to reside expires. Any change in subject will involve a change in the reason for residence which, as a rule, argues against a fresh authorization or an extension of the existing one if it does not take place within the initial phase of the studies.

Proof of authorization to reside will take the form of an entry in the student's passport or a particular personal identity card.

If the period of study is longer than one year, the authorization can initially be limited to a 1-year period; in that case it can be renewed on a yearly basis. Renewal will depend on the student's ability to prove that he/she fulfils the requirements for its original issue and that he/she has passed any tests or examinations set by the institution in which he/she is studying.

At the end of his course of study, or if the student interrupts his studies, a national of a third country will in principle have to leave the territory of the Member State; if he/she wishes to return to that country he/she will have to re-apply for authorization to re-enter.

4. Employment authorization

In principle a national of a third country who is studying in the territory of a Member State may not engage in gainful employment, either in a self-employed or employed capacity. Member States may allow short-term or subsidiary jobs. Such jobs must not affect the continuation of his/her studies; neither must they, in principle, represent an income vital for the subsistence of the student.

5. Admission of family members

National provisions will apply as regards the possible admission of family members and the taking-up of employment or study by the spouse.

Once the third country national has ended his/her studies, the spouse and children to whom authorization to stay was granted are also required to leave the territory of the Member State if they have no other authorization to remain.

ANNEX II

COUNCIL RESOLUTION
relating to the limitations on the admission
of third-country nationals to the territory of the Member States
for the purpose of pursuing activities as self-employed persons

A. GENERAL CONSIDERATIONS ON POLICY

1. The Council recalls that, in the report on immigration and asylum policy by the Ministers responsible for immigration adopted by the European Council held in Maastricht in 1991, priority was given to the harmonization of policies on admission for the purposes of pursuing self-employed occupation. In principle, these policies are restrictive. In any case existing obligations and future developments for example in GATT, GATS and OECD agreements must be taken into account.

2. The Council notes that the 1994 programme of priority work in the field of justice and home affairs, adopted by the Council at its meeting in Brussels on 29 and 30 November 1993, included, as a priority measure, a decision to conclude work in the field of the admission of self-employed persons.

3. The Council welcomes the progress achieved as a result of the signing of the final act and agreements under the Uruguay Round in Marrakesh on 15 April 1994 towards free international trade for the promotion of investment and the creation of jobs.

4. The Council takes the view that to a certain extent the question of the admission of persons for the purposes of pursuing a salaried activity and that of the admission of self-employed persons can be treated distinctly. The admission of persons for the purpose of an independent economic activity who add value (investment, innovation, transfer of technology, job creation) to the economy of the host country is of benefit. Artists exercising an independent activity of significance may also be admitted.

5. The Council considers that third-country nationals should not be admitted to a Member State for the purposes of pursuing an independent economic activity when the latter is of no economic benefit to that State or any of its regions.

6. The Council considers it necessary to ensure that persons who are attempting to find employment in a dependent working relationship are not admitted as self-employed persons.

7. The Council also considers that it is necessary to avoid persons establishing themselves and embarking on a self-employed occupation without having the appropriate qualifications and/or financial means and to avoid their entering into a dependent working relationship.

8. The Council agrees not to address in this resolution the question of third-country nationals legally resident on a permanent basis on the territory of a Member State although they do not have the right to admission or residence in another Member State. It agrees to examine this question at a later date.

9. The Council accordingly agrees that the principles set out below shall govern Member States' internal policies towards third-country nationals seeking admission to or permission to remain in their territories in order to engage in a self-employed occupation. The Council agrees that the principles set out below may not be relaxed by Member States in their national legislation. It agrees to have regard to these principles in any proposals for the revision of national legislation. The Member States will further endeavour to seek to ensure by 1 January 1996 that national legislation is in conformity with them. The principles are not legally binding on member States and do not afford a ground for action by individuals.

10. The Council agrees that there shall be a regular review of the transposition of this resolution and of the need for amendments to

it.

11. The Council also confirms that the application of these principles is no bar to the application of national rules on law and order, public health and national security.

B. PERSONS TO WHOM THIS RESOLUTION DOES NOT APPLY

The harmonization principles do not apply to:

- persons who have right of free movement under Community law, i.e. nationals of Member States, nationals of EFTA countries parties to the Agreement on the European Economic Area and members of their families;

- third-country nationals who have been allowed admission for the purpose of family reunification to join nationals of a Member State or a third country resident in the Member State concerned;

- third-country nationals whose access to employment is covered by rights stemming from agreements concluded with third countries which are governed by Community law and by bilateral and multilateral Agreements, such as GATT, GATS or OECD agreements;

- third-country nationals entering the Member States in order to engage in paid employment. Such persons are covered by the principles set out in the Resolution on limitations on admissions of third-country nationals to the Member States for employment adopted by the Council on 20 and 21 June 1994;

- third-country nationals entering the Member States for study purposes. Such persons are covered by the principles to be set out in the Resolution on the admission of third-country nationals to the Member States for study purposes.

C. GENERAL PRINCIPLES

Point 1

(1)
This resolution only concerns individuals and does not affect the setting up of firms.

(2)
"Activity as a self-employed person" means any activity carried out in a personal capacity or in the legal form of a company or firm within the meaning of the second paragraph of Article 58 of the EC Treaty without being answerable to an employer in either case.

(3)
Only those associates actively involved and whose presence is necessary in pursuing the company's or firm's aims and in its management may be authorized to establish themselves in the host Member State's territory. In cases where those associates do not have a majority or substantial share holding in the company or firm Member States may reserve the right not to admit them except in the case of salaried persons when they have received authorization to work.

Point 2

(1)
Member States may allow third-country nationals wishing to pursue activities as self-employed persons to enter their territory where it has been duly established, in accordance with the requirements of each Member State, that that activity will produce the benefits referred to in Section A(4) or that it corresponds to the activity referred to in

the last sentence of Section A(4) and that general legal provisions governing entry and residence have been complied with.

(2)
The admission procedure should ensure that persons who quite obviously wish to engage in paid employment or whose partnership or directorship amounts to disguised paid employment are not admitted as self-employed persons. Without prejudice to the application of point 8(2), once admitted, the admission to activities as a self-employed person does not extend to looking for or accepting a job on the labour market.

Point 3

(1)
Requests for admission must be submitted to the authorities of the host Member State which are competent under national law through the consular or diplomatic representation of the State or through another national competent authority designated for this purpose in the home country or the country of origin of the person seeking admission to pursue activities as a self-employed person.

(2)
They must be accompanied by information which can be used to assess whether the planned activity meets the preconditions referred to under point 2, and also by documentary evidence that the activity will be carried out in accordance with the relevant national legislation.

(3)
The following could for example be required for assessing the preconditions referred to under point 2 in accordance with national legislation:

- documents indicating the nature, scale and duration of the activity the person wishes to engage in;

- documents indicating the number of staff likely to be required;

- a description of the premises where the activity will be carried out, which should be appropriate for it;

- evidence of the funds available for the intended purpose.

(4)
The following could for example be required for assessing compliance with legislation in force, in accordance with national legislation:

- proof that the self-employed person meets the conditions of the host Member State regarding professional qualifications and access to the occupation;

- in the case of companies or firms, the instrument of incorporation, evidence of publication or registration thereof, and the names of the directors and managerial staff and of the associates authorized to act on their behalf;

- proof such as police documentation or similar documents, showing the integrity of the person concerned.

Point 4

(1)
Authorization to engage in a self-employed occupation will be granted in accordance with the provisions of national aliens legislation and in writing, for example in the form of a passport stamp or other document. Such authorization will be personal and non-transferable.

(2)
The validity of the initial authorization may be limited in time. Upon application it may be extended for a further period and/or be of unlimited validity, if the conditions for access continue to obtain as provided for in national legislation.

Point 5

(1)
All requests for renewal must, where so required under Member States' national legislation, be accompanied by documentary evidence that the self-employed person offers guarantees for the continued orderly pursuit of his occupation.

(2)
At least at the time when any renewal application referred to under point 4(2) is submitted, a check may be made on the bona fide nature of the activity engaged in, whether it still corresponds to the activity for which authorization was given, the ability of the person concerned to support himself by the income from that activity and its

continuing compliance with the preconditions referred to under point 2(1).

(3)
Any further checks which Member States may make thereafter could in principle be limited.

Point 6

(1)
Under the conditions laid down by national law, Member States may grant third-country nationals wishing to provide a service leave to enter their territory with authorization to carry out the relevant work for the performance of the service

(2)
"Service provider" means a self-employed person (residing abroad) whose services are sought by a person residing in a Member State in order to carry out, against remuneration, a specific task over a specific period.

Point 7

Persons already present in the territory of a Member State as students, trainees, seasonal workers, service providers, contract workers or for other reasons will not as a general rule be permitted to extend their stay for the purpose of establishing themselves as self-employed persons. Such persons must leave the country once the purpose of stay on the basis of which they were given leave to enter the country has ceased to apply.

Point 8

(1)
In principle care must be taken to ensure that persons admitted to pursue activities as self-employed persons do not eventually enter into a paid employment relationship.

(2)
Member States may allow self-employed persons who have acquired the right to long-term/permanent residence to seek where appropriate a work permit in order to obtain paid employment.

Point 9

The spouse and unmarried children under a maximum age, varying between 16 and 18 years depending on the Member State concerned, of a self-employed person will in principle be admitted to join that person, subject to the conditions set out in the Resolution concerning family reunification adopted by the Ministers responsible for immigration questions of the European Community on 1 June 1993.

Point 10

(1)
Member States' arrangements enabling them to refuse admission on grounds of public security and public order shall not be affected by this Resolution.

(2)
The provisions of this Resolution shall not affect Member States' provisions governing trades and professions or arrangements concerning the mutual recognition of vocational qualifications.

Point 11

Nothing in this Resolution prevents any Member State from reserving the right to admit, in compliance with its national legislation, to admit to its territory third-country nationals who make substantial investments in the commerce and industry of that Member State if there are important economic grounds for derogating from the principles of this Resolution which restrict the business activities of the third-country nationals in question.

ANNEX III

Council Conclusions on the organization and development of the Centre for Information, Discussion and Exchange on the crossing of frontiers and immigration (CIREFI)

The Council recalls the decision taken by the Ministers responsible for immigration on 30 November/1 December 1992 to establish a Centre for Information, Discussion and Exchange on the crossing of frontiers and immigration (CIREFI) and notes that in the 1994 priority work programme in the field of justice and home affairs which it adopted in November 1993, CIREFI was requested to continue its work.

The Council emphasizes the urgent problems arising from illegal immigration and unlawful residence by nationals of third countries in the Member States and considers that only concerted action by the Member States on a basis of solidarity can stem or reduce the flow of unauthorized immigration.

The Council underlines the need for all Member States of the Union to combat criminal illegal immigration networks and make it impossible for them to arrange or assist large-scale illegal immigration flows.

Given that further progress in cooperation between Member States requires improved exchanges of information and uniform situation assessments in order to improve coordination on a Union-wide basis in the areas of illegal immigration and expulsion, the Council considers and decides that CIREFI should be, as a further step, progressively developed in the following way:

1. CIREFI will assist the Member States in effectively studying legal immigration, prevent illegal immigration and unlawful residence, in effectively combating immigration crime, in better detecting forged documents and in improving expulsion practice.

2. CIREFI shall meet on a regular basis and shall consist of Expert Representatives of the Member States (Standing Conference) with logistical back-up from the General Secretariat of the Council.

3. Without prejudice to the other tasks included in the Ministerial decision of 30 November/1 December 1992, the specific tasks of CIREFI shall be to:

3.1. collate, using standard forms, statistical information concerning
(a) legal immigration,
(b) illegal immigration and unlawful residence,
(c) facilitating of illegal immigration,
(d) use of false or falsified travel documents,
(e) measures taken by competent authorities, and draw up regular and occasional situation reports on this basis commenting on trends, developments and changes;

3.2. analyses the information compiled, draw conclusions and, when appropriate, give advice;

3.3. conduct exchanges of information on expulsion matters, particularly in respect of countries of destination, airports of departure or arrival, carriers, flight routes, fares, reservation possibilities, conditions of carriage, escort requirements and charter possibilities as well as on problems in obtaining repatriation travel documents.

CIREFI will submit an annual report on its activities, and any additional reports on request, to the Council (JHA).

Personal data may not be processed and, in particular, may not be communicated by or to CIREFI.

CIREFI will not be empowered to give instructions to Member States' authorities.

The activities of CIREFI will not affect closer cooperation between Member States.

4. CIREFI, in the form of the standing Conference as defined in 2 above, will meet regularly or as circumstances require; as a general rule this should be once a month. Where possible, discussions adequately prepared in advance should be structured around a particular current item of common interest to permit an efficient exchange of information.

The relevant bodies of the Council will determine priorities for CIREFI's ongoing work within the framework of the tasks assigned to it under paragraph 3.

The logistical back-up at the General Secretariat of the Council will provide CIREFI with the necessary administrative and organizational assistance and will contribute to prior and subsequent processing of agendas for CIREFI's meetings. The General Secretariat of the Council will, within its budgetary constraints, ensure provision of the staff and equipment required for CIREFI to perform its tasks.

5. The Council also notes that, during the time between meetings of CIREFI as a standing conference as defined in 2 above, the national central units of the Member States concerned will exchange information directly at a multilateral or bilateral level in cases requiring immediate action. Information will be exchanged as far as possible using standard forms or as events dictate using an agreed layout.

Costs incurred by national central units, including the cost of

communicating with other national central units, will be borne by the Member State concerned.

6. The Council considers that CIREFI may begin to carry out its work as defined in these conclusions from 1 January 1995.