

5935/98

LIMITE

CK4 11

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OUTCOME OF PROCEEDINGS

from : K4 Committee

date : 10 February 1998

1. Adoption of the Agenda

The Agenda was adopted as provided in document 5226/98 OJ/CK4 2 subject to the addition of various items under point 19 "Other business".

2. Europol: terrorism (doc. 5284/98 CK4 5)

The Committee had a wide exchange of views on the suggestion of the Spanish delegation to include terrorism from 1 January 1999 onwards in the competencies of Europol.

The Presidency concluded that there was basic agreement on the Spanish suggestion. Discussion on the start of Europol's activities in this field has to be pursued, some delegations having suggested a date earlier than 1 January 1999.

It was understood that the launching of activities in regard to terrorism should not proceed at the expense of other tasks. Europol should have the necessary resources for work on terrorism.

The Europol group was invited to work out technicalities in cooperation with EDU with a view to a political decision by the JHA March Council.

3. Rules on confidentiality (doc. 5694/98 EUROPOL 17)

The Italian delegation declared that it was not in a position to lift its reservation on Art paragraph 3.

The Legal Service of the Council was invited to explain in a written note its reservations on Art. 2 paragraph 5.

The German delegation insisted that the table of equivalence should be adopted at the same time as the text on rules of confidentiality.

Having also noted a scrutiny reservation on the part of the German delegation and a linguistic reservation of the French delegation the Presidency decided to send the text back to the working group for its meeting of 25/26 February 1998, it being understood that the results of its work should be presented directly to COREPER.

4. Rules concerning the receipt of information by Europol from third states and third bodies

(doc. 8033/5/97 EUROPOL 28 REV 5)

The Committee noted the lifting of the scrutiny reservation on the part of the German delegation on the following text of Art. 4 paragraph 4:

"Without prejudice to Article 20 of the Convention information which has clearly been obtained by a Third State in obvious violation of human rights shall not be stored in the Europol information system or analysis files. If Europol considers this information to be of vital importance for a Member State, Europol may transmit the information to the Member State concerned indicating the circumstances under which this information has been obtained."

The French delegation expressed a reservation on this text notably on the words "If Europol considers this information to be of vital importance for a Member State,...". It preferred the original text in document 8833/5/98 EUROPOL 28 REV 5. The presidency announced that at the next meeting of K.4 Committee / Europol group this issue will be reexamined.

5. Europol: progress report

(doc. 5801/98 EUROPOL 20)

The Committee welcomed the above-mentioned report and took note of the state of ratification procedures of Member States that have not yet deposited ratification instruments.

6. Influx of migrants from Iraq and the neighbouring region: implementation of the action plan

(doc. 5593/98 ASIM 15 EUROPOL 15 CIREA 12 CIREFI 5)

The Committee generally endorsed the Presidency's proposals for implementing the third-pillar elements of the action plan (doc. 5593/98 ASIM 15 EUROPOL 15 CIREA 12 CIREFI 5), as well as the indicative timetable on such implementation distributed to delegations, and took note of the Presidency's brief oral report on progress on implementation (including a report on the outcome of the Presidency's recent meeting with the Turkish authorities in Ankara and with UNHCR representatives in Geneva). It agreed that a full written progress report on implementation would be presented at the next meeting (24 and 25 February), with a view to submission to the JHA Council of 19 March.

The Committee also took note of the Italian delegation's presentation on the work done on this matter as a follow-up to the Rome technical-operational meeting of 8 January (outlined in documents 5812/98 EUROPOL 22 ASIM 21 + ADD 1), and agreed that it would continue coordination with this forum, as well as with the Schengen Task Force.

Delegations exchanged views regarding the issue of **extension of the scope of the EURODAC Convention** to cover the fingerprinting of illegal immigrants. Three strands of thought emerged from the debate.

A first group of delegations (DK, D, NL, A) wished to see the Convention extended to illegal immigrants before it was concluded. They considered that this question should be brought as soon as possible to the working parties concerned, which included, in addition to the Migration Working Party, the Asylum Working Party, due to this question's link with the Dublin Convention (D), and the EURODAC Working Party, since a settlement of this question was a prerequisite to political agreement on the EURODAC Convention at the March JHA Council (A).

A second group of delegations (F, GR, P) advocated the conclusion of the Convention without an extension, particularly in view of their national provisions, which do not allow the fingerprinting of illegal immigrants, unless they commit a criminal offence. If, however, a debate was to take place, it should be at Council level (E).

A third group of delegations (B, IRL, L, FIN, S), though ready to take forward a discussion on a possible extension (which - in the case of B and L - would require a change of their national provisions), gave priority to a speedy conclusion of the existing text, which should not be

delayed by a discussion on extension. Some of these delegations held the view that, since there was no political agreement as yet on a possible extension of EURODAC, a debate of principle was needed at a higher political level, before any work could be done at working group level: this debate could take place in the K.4 Committee (B), or in the Council, which could discuss the possibility of drafting a separate convention on this matter (L, FIN). The Irish delegation was of the opinion that to assist in the political discussion, the issue could usefully be discussed by the Migration and Asylum working parties, prior to consideration by the K.4 Committee and the Council.

In connection with the question of fingerprint exchange, some delegations (DK, GR, FIN) considered that, pending the entry into force of the EURODAC Convention, bilateral exchange should be encouraged (in this respect, reference was made to Denmark's proposal in document 11746/97 ASIM 205).

The Committee agreed to the following approach for future action on this point, as outlined by the Presidency:

- in the first place, as much progress should be made as possible on the current draft of the Eurodac Convention, with a view to reaching political agreement on this draft at the March JHA Council;
- in the second place, work might be started on a new legal instrument extending the Eurodac Convention to illegal immigrants. Whether or not this work could be continued might depend on the settlement of a number of outstanding points at working group level (in particular, the definition of illegal immigrant could best be worked out by the Migration Working Party and possibly, in parallel, by the Asylum Working Party; work on fingerprinting could be carried out by the EURODAC Working Party);
- in the third place, an inquiry could be made, by way of a questionnaire, on the existing laws of Member States regarding fingerprinting, on which basis conclusions could be drawn on the extent to which bilateral exchange of fingerprints could be encouraged.

Other points made by delegations on the Presidency's proposals include the following:

- point 7: great emphasis to be placed on UNHCR's position, for the purpose both of evaluating the present situation and of creating in the future areas with sufficient security guarantees to become internal flight options (DK, supported by S);
- point 8: as regards the funding of reception conditions, a proposal on the "Brinkhorst" budget lines would be discussed presently in COREPER; once the existing difficulties had been resolved, a committee would be set up; Member States should then turn in their proposals as quickly as possible, so as to hold the committee's first meeting quickly; the time frame for the Commission's report in this matter depended on these elements (Commission);
- points 9-11 and 13: updating information on a monthly basis could cause practical difficulties; longer intervals might be desirable (A);
- point 13: this action was to be brought together with points 20-22 (A);
- point 27 and following: this action would be better dealt with within the False Documents Working Party (A);
- points 31, 32 and 36: this action would be better dealt with within the External Border Working Party (A).

7. Implementation of Dublin Convention : procedural discussion

doc. 57777/98 ASIM 20

The document tabled by the Presidency (ASIM 20) was welcomed by the delegations.

According to the request of the German and Italian delegations, point 17 ("Conclusion of Eurodac Convention") of the Action Plan on the influx from Iraq and the neighbouring region will be added in paragraph 3 of ASIM 20.

The Danish delegation pointed out that it had had till now a positive experience of the application of the Dublin Convention and that the present work undertaken for the improvement of its application should not lead to weakening it. For that delegation the most important problem faced concerns the delays which are too long and it therefore fully supports paragraph 2 (b) of the Presidency's note concerning this issue. It suggested that this item should be discussed in the context of the seminar for practitioners to be held in April 1998.

The Spanish delegation expressed its concern about the deadlines indicated which might be too short, especially regarding complex matters, such as a lack of agreement on interpretation of some provisions of the Dublin Convention (paragraph 2 (c)).

The Netherlands delegation considered that even if it was not possible to have a decision in March, it could be useful to have a meeting of the Article 18 Committee to get its political opinion.

The Presidency stated that the possibility of the Article 18 Committee sitting in March will be kept open till the next K.4 Committee meeting on 24-25 February where the final decision will be taken whether to convene the Article 18 Committee or to put that item as a progress report on the March JHA Council.

8. Draft Convention on driving disqualifications
doc. 5691/98 JUSTPEN 13

The K.4 Committee examined the questions set out under item II (a) and (b) in 5691/98 JUSTPEN 13.

Regarding item II (a), the Danish and German delegations maintained their general scrutiny reservations on the draft Convention at this stage.

Concerning item II (b) (extension by the State of residence of the duration of the driving disqualification decided by the State of the offence), the representative of the Legal Service of the Council was of the opinion that the proposed Article 3(6) could lead to discrimination in a way which would be contrary to Community law, and advised the Committee to find another solution. The Netherlands delegation maintained its reservation on the provision. The Belgian delegation also entered a reservation. On the other hand, the French delegation, which lifted its scrutiny reservation, and the Swedish and Portuguese delegations said they could agree to the text. The Danish delegation maintained its scrutiny reservation.

Some suggestions made by the Legal Service regarding the preamble to the Convention were circulated in a room document. These suggestions will be examined by the Working Party on disqualification from driving.

The Committee agreed to reexamine the draft Convention at its meeting on 24 and 25 February 1998.

9. Work to advance technical measures to counter trafficking in stolen vehicles
(doc. 5168/98 ENFOPOL 2)

The Committee charged the Police Cooperation Group to provide an input to the work on after theft tracking devices being undertaken by the European Standardisation Committee (ESC).

This input could be to reply to a questionnaire prepared by the ESC and to be represented at ESC Working Group plenary sessions.

10. Encryption: follow-up to the discussion at the informal meeting of ministers
(doc. 5800/98 ENFOPOL 14)

The Committee charged the Police Cooperation Group to

- continue its work on a common Third Pillar approach to encryption (docs 12787/97 ENFOPOL 229, 5532/98 ENFOPOL 8);
- consider the possibility of a Council Resolution on law enforcement and encryption.

11. The 10 principles on high-tech crime and the 40 recommendations on organised crime

Several delegations endorsed in general the approach of the Presidency and suggested that the G8 Recommendations should be seen in the light of the Action Plan on organized crime approved by the European Council. The Spanish delegation suggested that the 25 measures to combat terrorism, adopted by the Ministers of Foreign Affairs on 30 July 1996 should also be taken into account. The Belgian delegation noted that in respect of some of the 10 principles work was already carried out at the level of Interpol and the Council of Europe. It was important to avoid duplication of work.

The Presidency concluded that it would suggest a draft text to the Council which would essentially confirm the political commitment of Member States.

12. Relations with Interpol
(doc. 5060/1/98 EUROPOL 1 REV 1)

The Committee agreed on the strategy set out in doc. 5060/1/98 EUROPOL 1 REV 1. The presidency declared that it will start the implementation of this strategy..

13. Relations with the United States: report on meeting with Presidency

doc. 5742/98 CK4 USA 1

The Committee took note of the report set in document 5742/1/98 CK4 7 USA 1 REV 1. It approved the various suggestions made by the Presidency for the implementation of the NTA during the coming months.

The Commission, Greece and Italy suggested some amendments which have been accepted (see document 5742/1/98 CK4 47 USA 1 REV. 1 COR 1).

14. Relations with the Council of Europe

doc. 13506/97 CK4 48

Delegations endorsed in general the approach taken by the Presidency in doc 5876/98 CK4 10 and suggested that additional points could be discussed at Troika meetings with the Council of Europe (terrorism, organized crime, drugs, racism and xenophobia, prevention of torture, data protection).

The Presidency welcomed the positive response of delegations and added that it would add Third Pillar aspects of racism to the draft agenda of the meeting with the Council of Europe. It would report back to the K.4. Committee after the meeting which would take place on 6 March.

15. Relations with Morocco

Pursuant to a statement of the Spanish minister at the Informal meeting of the JHA ministers in Birmingham, the Spanish delegation declared that relations with Morocco on third pillar matters have to be stepped up because of common problems, especially in the fields of migration and drugs.

More contacts at all levels are needed.

Most delegations agreed on the need for a more fruitful dialogue with Morocco, but some of them observed that rules on contacts with third states should be respected. No competing structures should be created. Issues of mutual interest are also addressed in the Euromed dialogue.

The Austrian delegation emphasized the need ~~for~~ contacts with Switzerland.

The Presidency said that it would reflect on the ~~suggestion~~ of the Spanish delegation, taking into account the comments made. The outcome of its reflections will be presented to COREPER in connection with the Presidency ~~paper~~ on external relations in the third pillar under the UK Presidency (cf. doc. 13506/97 CK4 48).

16. Follow-up to Cooperation Council with Russia

(doc. 5471/98 NIS 6 + ADD 1 + REV 1 (en) + REV 1 ADD 1 (en))

The Presidency noted the liaison officers meeting on Organized Crime on 10 February 1998 in Moscow.

The Finnish delegation pointed out that cooperation with Russia in the field of Justice and Home Affairs has a multidisciplinary character covering also illegal immigration. Possibilities offered by the PHARE program should be fully explored.

It announced that his country is organizing 2 seminars with Russia on legal procedures and prison systems.

The representative of the Commission mentionned the report of experts on Russia and the New Independent States. He urged a meeting of experts to discuss the follow-up to this report.

The Committee agreed to discuss relations with Russia again on the basis of the report of the aforementioned meeting of liaison officers at its meeting of 30/31 March 1998.

17. Task Force on organized crime in the Baltic Sea Region

- Information from the Swedish delegation

(doc. 5738/98 CRIMORG 14)

The Committee welcomed the presentation by the Swedish delegation on work of the Task Force on organized crime in the Baltic Sea Region.

It noted that the Task Force is an example of effective operational cooperation on a regional basis. It asked the Swedish delegation to inform it regularly about the forthcoming activities of the Task Force.

18. Consultation of the European Parliament

- Draft Joint Action concerning arrangements for the better exchange of information in respect of payment card crime between member States' law enforcement agencies, and between those agencies and the payment card industry, where such information is required for the investigation of offenses
doc. 5683/98 ENFOPOL 9
- Draft Joint Action concerning the arrangements for co-operation between Member States' law enforcement authorities in respect of the tracing, freezing and confiscation of drug traffickers' proceeds
doc. 5516/98 CORDROGUE 9 CRIMORG 9

The Committee took note that the Presidency will consult the European Parliament on the two Draft joint actions referred to above on the bases respectively of documents 5683/98 ENFOPOL 9 and 5516/98 CORDROGUE 9 CRIMORG 9.

On this occasion, the Dutch delegation expressed doubts about the need to draw up a separate Joint Action on credit card fraud. This delegation felt that there was no need to designate special contact points to facilitate the exchange of information concerning payment card crime since recommendation 19 of the High Level Group's Action Plan to combat organised crime already indicates the need to designate central national contact points. The Presidency pointed to the added value of the draft and stated that the fact that the draft was sent to the Parliament was without prejudice to further discussions within the Council.

19. Other business

- Court of Justice and the Brussels II Convention (Belgium)

The Belgian delegation raised the possibility of setting up a fast procedure with the Court of Justice in cases involving family law in which a preliminary question is based on the Brussels II Convention. The Belgian Delegation pointed out that in cases involving, for instance, custody decisions, it is difficult to envisage the possibility of postponing a case pending in a national court for several months awaiting a preliminary ruling from the Court of Justice.

The Belgian delegation asked the Presidency to take up the matter with the Court of Justice in order to reflect on a possible revision of the Rules of Procedure of the Court of Justice in which a fast track procedure should be laid down for cases based on the Brussels II Convention.

The President informed the Belgian Delegation that it would reflect on the possibility of take up the matter with the Court of Justice, possibly at a visit of the Lord Chancellor in May.

- **JHA Council of 19 March 1998**

The Presidency circulated a tentative agenda for the JHA Council of Ministers of 19 March 1998.

- **Relations with Canada: report on meeting with Presidency (Presidency)**

On 4. February, the Presidency, assisted by the Council Secretariat and in association with the Commission, met with representatives of Canada's Mission to the EU (Robert HAGE, deputy Head of Mission and Martial PAGE, Counsellor) to discuss the implementation of the Joint EU-Canada action plan adopted on 13 December 1996.

The Presidency indicated that this meeting was aimed at preparing a formal meeting with T. WALKER to take place in London on 11 March 1998. The following items have been discussed:

- Immigration

Canada asked advice on how to organise (financing, timing) a seminar on the use of modern technologies in immigration matters.

Canada was satisfied by the meeting with CIREA and would like to have the same exercise with CIREFI.

- Judicial cooperation

The Council Secretariat will brief Canadian experts on the work of the MLA Working Group.

Canada indicated that it might be interested in participating in a meeting of this Group along with the Americans.

Canada was interested in getting information on GROTIUS from the Commission.

- Drugs

The Presidency offered to give a briefing on the Caribbean and Central Asia.

- Schengen

Canada was interested in being informed about the Schengen integration process into the Union.

- Miscellaneous

The Presidency will forward to Canada a copy of document CK4 48 REV.1 (UK Presidency Programme for external relations).

Canada asked if the Presidency intends to visit Canada as Mr. FISCHBACH did.

- **Mandate to give to EDU on Illegal Immigration of Iraqis (Kurds) (Belgium)**

The Belgian delegation referred to the wish expressed by the Schengen Executive Committee to avail itself of EDU's expertise to assess correctly the threat caused by the illegal Immigration of Iraqis (Kurds).

B indicated that for institutional reasons such a mandate should be given and its implementation controlled by the EU competent bodies. The Presidency concluded that it will reflect on it and ask the Europol Working Group to examine this question at its meeting of 26/27 February 1998.

- **Enlargement (Commission)**

The Commission circulated an information note on Member States' involvement in the Enlargement preparations: JHA missions to candidate countries.

D welcomed the document but asked the Commission to develop it at a further meeting.

- **Refusal of the European Airlines to take back detainees for removal to Africa (Austria)**

The Austrian delegation indicated that it experienced difficulties with some airlines (AF, KLM, Lufthansa) refusing to carry removals from Austria to Nigeria and Ghana. It asked if the relevant Member States could make the necessary contacts with their national carrier to resolve this.

The French delegation answered that it did not experience any difficulties with Air France. The Presidency concluded that it would pass on this question to the Migration Working Group which was to meet on 11 February.

- **Review of visa requirement for Baltic Countries (Italian suggestion)**

The Italian delegation asked whether any Member State planned to relax its visa regime for the Baltic States.

After a tour de table, the Presidency concluded that this matter had to be considered in the framework of the Schengen cooperation where most Member States seemed to keep their policy unchanged, for the time being.