



**COUNCIL OF
THE EUROPEAN UNION**

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LIMITE

**COPEN 58
DROIPEN 36**

OUTCOME OF PROCEEDINGS

of : Joint meeting of experts of the EU and of the USA and Canada on cooperation in
criminal matters
dated : 20 June 2000

1. Adoption of the agenda

The agenda set out in telex 2605 of 7 June 2000 was approved with the addition of the questions set out under other business below.

2. Dialogue with Canada and the USA

a) Convention of 29 May 2000 on mutual assistance in criminal matters between the Member States of the European Union

**doc. 7846/1/00 COPEN 32 REV 1 + COR 1(fi) + COR 2(s) + COR 3(it) + COR 4(fr) +
COR 5(f)**

The EU Presidency briefly introduced the Convention of 29 May 2000 on mutual assistance in criminal matters between the Member States of the European Union (published in OJ L 140, 14.6.00, page 1). The Presidency in particular mentioned:

- That the Convention does not stand alone but supplements existing provisions in the 1959 Council of Europe Convention on mutual assistance in criminal matters, the 1990 Schengen Implementation Convention and the 1962 Benelux Treaty;
- That the Convention in general only applies between the EU Member States. However, certain provisions also apply to Norway and Iceland. But apart from that the Convention does not affect the relations between EU Member States and third countries, including for example the other parties to the 1959 Convention.

The Presidency then presented the main features of the Convention and expressed the hope that the explanations given had answered some of the questions put by the USA in relation to the Convention in advance of the meeting.

The USA expressed some concerns regarding cooperation between EU member States and other States:

- The diminution of the role of the central authorities in cooperation between EU Member States might influence the conditions under which those authorities may cooperate with non-EU States;
- Article 23 of the Convention implies that personal data communicated under the Convention to a Member State may only be passed on to a third country with the prior consent of the Member State having supplied the data;
- The USA asked a number of questions concerning the provisions of the Convention on interception of telecommunications and pointed out that if the text adopted by the EU was taken as a basis in the context of the ongoing work in Strasbourg it could give a global impact on how to cooperate internationally in the fight against high tech crime. The USA was in particular interested in to which types of telecommunications the provisions applied and to which extent the interception rules may have consequences within the USA.

The Presidency replied the following:

- The principle of direct contacts between judicial authorities was introduced already with the Schengen agreement. But that agreement only provided direct contacts as an option, whereas the EU Convention provides a general obligation (with some exceptions) to make contacts directly. However, the central authorities of the EU Member States will continue to be competent in relation to third countries in accordance with the relevant arrangements;
- Article 23 reflects the principle that a Member State having supplied personal data should be able to control the use of the data for purposes not related to proceedings covered by the Convention;
- The Presidency gave answers to the technical questions asked and underlined that the EU can not on the basis of the mutual assistance Convention act in a way which would not be in conformity with arrangements with the USA or with applicable international law. The Presidency stressed the importance of appropriate contacts between the USA, Canada and the EU on the practical application of rules on interception of telecommunications.¹

**b) Framework Decision of 29 May 2000 on increasing protection by criminal penalties and other sanctions against counterfeiting in connection with the introduction of the euro
doc. 7612/00 DROIPEN 12 + REV 1(d) +COR 1(dk) + REV 2(nl,el,p,fi) + COR 1(fi)**

In reply to an intervention by the USA, the Presidency gave the following information on the Framework Decision:

- In general, the instrument applies to all currency and not just the euro. However, Article 5(a) and Article 7(2) only apply to the euro;
- The mere possession of counterfeit currency is not an offence under the instrument. The inclusion of possession was considered unnecessary by the Council as the import, export, transport, receiving and obtaining of counterfeit currency is covered;

¹ The Working Party on Cooperation in Criminal Matters is examining a draft explanatory report to the Convention. The report is likely to be presented to the Council by the end of the year and will most certainly contain a number of explanations in respect of the provisions on interception.

- Although different Member States have different penalties in respect of counterfeiting, the instrument provides in its Article 6 a minimum which gives a relatively high degree of protection against counterfeiting by penal and other sanctions in all Member States;
- The principle of universal jurisdiction in Article 7(2) implies for example that the EU Member States members of the euro must have jurisdiction in a case where a non-EU citizen commits counterfeiting in respect of the euro outside the EU.

The USA and Canada informed the delegations that their national criminal law did not give protection to the euro in advance of it being issued (cf Article 5 of the Framework Decision.

The Framework Decision referred to has been published in OJ L 140, 14.6.2000, page 1.

c) Draft Framework Decision on combating fraud and counterfeiting of non-cash payment means

Doc. SN 3040/00

The Presidency briefly informed the USA and Canada on the content of the draft instrument.

**d) Draft Framework Decision on the standing of victims in criminal procedure
doc. 7797/00 COPEN 29 + ADD 1**

The Presidency presented the proposal on the standing of victims in criminal procedure. It was noted that provisions comparable to those of the proposal existed in both the USA and Canada. In Canada, a fund financed by fines had been set up in order to help witnesses. Canada informed delegations that the 10th International Symposium on Victims would take place in Montreal on 6-11 August 2000.

3. Other business

The Belgian delegation proposed the examination of the following questions at the meeting or at a future meeting:

1. International Criminal Court: What is the state of affair in the USA regarding procedures for the purpose of signing and ratifying the 1998 Rome Convention?
2. Discussions in the USA on death penalty.
3. Ratification by the USA of the Additional Protocol on the rights of children.
4. Accession by the USA to the 1959 European Convention on mutual assistance in criminal matters.

The USA gave its preliminary reactions to these questions and said it would be prepared to meet with representatives of the EU to address these questions in a more comprehensive way.
