Official Journal of the European Communities

ISSN 0378-6986

C 191

Volume 40

23 June 1997

English edition

Information and Notices

(Acts adopted under Title VI of the Treaty on European Union)

EXPLANATORY REPORT ON THE CONVENTION ON THE PROTECTION OF THE EUROPEAN COMMUNITIES' FINANCIAL INTERESTS

(Text approved by the Council on 26 May 1997)

(97/C 191/01)

CONVENTION

on the protection of the European Communities' financial interests

I. BACKGROUND

The protection of financial interests has been a high priority for the Governments and Parliaments of the Member States and for Community institutions for many years. The first steps were taken in the 1960s. On 10 August 1976 the Commission presented a draft Treaty [1] amending the Treaties establishing the European Communities so as to permit the adoption of common rules on the protection under criminal law of the Communities' financial interests and the prosecution of infringements of the provisions of those Treaties; this draft underwent lengthy discussion throughout the 1980s.

Since the late 1980s action in this sphere has intensified and discussion has proceeded on the question of legal protection under Community law and national law.

On 21 September 1989 the Court of Justice established in its judgment in Case 68/88 [2] that Member States had an obligation to protect the Communities' financial interests as they did their own and to provide for penalties that were effective, proportionate and dissuasive.

The Council (Justice) in its resolution of 13 November 1991 [3] stated that 'cooperation between the Member States in the prevention and combating of fraudulent practices by which harm is done to the financial interests of the Communities is enhanced by a compatibility of norms in the legal and administrative provisions of the Member States by which such conduct is sanctioned' and requested the Commission to conduct 'a comparative law study of the abovementioned legal and administrative provisions of the Member States, in order to see whether action should be taken to achieve greater compatibility of these provisions', a study which was styled 'the Delmas-Marty report'.

The Commission, on its own initiative, had already undertaken a comparative study on the systems of administrative and criminal penalties of the Member States and on the general principles of the system of Community penalties. The findings of these studies, which revealed the need for legislative action in both areas, were forwarded to the Council and the European Parliament in July 1993 [4].

In October 1992, the United Kingdom Presidency submitted to the Council *ad hoc* Working Party on Community and Criminal Law, set up under European Political Cooperation, a draft intergovernmental declaration on combating fraud affecting the financial interests of the Communities.

The Copenhagen European Council on 21 and 22 June 1993 clearly underlined the need to strengthen the protection of the Communities' financial interests under the new provisions of the Treaty on European Union (TEU) and 'invited the Commission to submit proposals in March 1994 at the latest'.

On 29 and 30 November 1993 the Justice and Home Affairs Council (JHA), at its first meeting after the entry into force of the TEU adopted a resolution on the protection of the Community's financial interests [5], in which it stated that 'it considered it

(1) OJ No C 222, 22. 9. 1976, p. 2.
(2) [ECR] 1989, p. 2965.
(3) OJ No C 328, 17. 12. 1991, p. 1.
(4) Commission staff working paper: SEC(93) 1172, 16 July 1993.
(5) OJ No C 224, 31. 8. 1992, p. 2.

appropriate to examine the measures which should be taken to achieve a greater degree of compatibility in the laws, regulations and administrative provisions of the Member States in the effort to combat fraud by which harm is done to the financial interests of the Community'.

The Working Party on Criminal and Community Law, set up after the informal meeting of Justice Ministers in Rome in November 1990 to deal in particular with the legal protection of the Communities' financial interests, examined in depth the 17 recommendations of the Delmas-Marty report during the first half of 1994.

Endeavours to ensure that financial interests are legally protected against fraud have been explicitly embodied in Article 209a of the Treaty establishing the European Community (EC Treaty) on the protection of the Communities' financial interests and in Title VI of the TEU on cooperation in the fields of justice and home affairs.

On 3 March 1994 the United Kingdom tabled a draft joint action, based on Title VI of the TEU, regarding the protection of the Communities' financial interests, which developed the ideas set out earlier in the United Kingdom Presidency's draft declaration.

In response to the Greek Presidency's report on the study of the Delmas-Marty report's recommendations, the Corfu European Council on 24 and 25 June 1994 'asked the Justice and Home Affairs Council to reach agreement on tackling the criminal aspects of fraud and report back to its meeting' in Essen.

In parallel, on 11 July 1994 the Commission tabled a draft Council Act establishing a Convention for the protection of the Communities' financial interests [1]. This draft was accompanied by a proposal for a Council Regulation on protection of the Communities' financial interests based on the EC Treaty.

In its resolution of 6 December 1994 [2] adopted under the German Presidency, the Council requested the elaboration of a legal instrument for the protection under national criminal law of the Communities' financial interests on the basis of the drafts from the United Kingdom for a joint action and from the Commission for a convention, taking into account the guiding principles which the Council then set out.

On the basis of that resolution the Essen European Council on 9 and 10 December 1995 asked the JHA Council to 'pursue its deliberations actively, so that joint action could be decided upon or a convention drawn up in the first half of 1995'.

The JHA Council on 9 and 10 March 1995 recorded political agreement on the advisability of first drawing up 'a separate legal instrument' covering certain basic questions and 'then continuing work on a more comprehensive legal instrument' [3]. The separate instrument would cover: a definition of fraud, the requirement to make fraud a criminal offence, fittingness of penalties, rules on the jurisdiction of Member States' courts, extradition and the criminal liability of heads of businesses.

The discussions of the Working Party on Community and Criminal Law proceeded under the Greek, German and French Presidencies on the basis of the two drafts (United Kingdom joint action and Commission convention) with additional compromise texts from the German and French Presidencies.

After the JHA Council in Luxembourg on 20 and 21 June 1995 had worked out compromise solutions, the Cannes European Council on 26 and 27 June 1995 noted agreement on the text of the Convention.

II. PRINCIPLES OF THE CONVENTION

The Convention originates in growing alarm at the fraud committed against the Community budget.

In its 1994 annual report on the fight against fraud, the Commission underlined the serious nature of fraud against the Communities' financial interests and the extent of the damage to the Communities' budget. The 1995 Community budget amounts to ECU 70 billion. In 1994 fraud reported under current Regulations and other sources amounted to

[1] COM(94) 214 final of 15 June 1994.
[2] OJ No C 355, 14. 12. 1994, p. 2.
[3] A first protocol to the Convention was drawn up on 27 September 1996 (OJ NO C 313, 23. 10. 1996, p. 1).

ECU 1,33 billion, i.e. 1,5 % of the total budget for that year.

Admittedly, the primary responsibility for combating fraud lies with the Member States, which must take the necessary steps to prevent and punish fraud and irregularities effectively and to recover the losses incurred.

It is the task of national authorities to collect revenue and administer the bulk of expenditure. Article 5 of the EC Treaty requires Member States to implement Community law and ensure that the obligations under the Treaty are fulfilled.

Furthermore, Article 209a of the Treaty states that:

'Member States shall take the same measures to counter fraud affecting the financial interests of the Community as they take to counter fraud affecting their own financial interests.

Without prejudice to other provisions of this Treaty, Member States shall coordinate their action aimed at protecting the financial interests of the Community against fraud. To this end they shall organize, with the help of the Commission, close and regular cooperation between the competent departments of their administrations.'

Thus Article 209a establishes the principle of assimilation identified by the Court of Justice in its ruling in Case 68/88 and spells out the principle that Member States are, with the Commission's assistance, to cooperate closely and regularly in order to protect the Communities' financial interests against fraud.

In addition, the introductory phrase and point(s) of Article K.1 (5) state that:

'For the purposes of achieving the objectives of the Union, in particular the free movement of persons, and without prejudice to the powers of the European Community, Member States shall regard the following areas as matters of common interest:

— combating fraud on an international scale in so far as this is not covered by (7) to (9)' (judicial cooperation in criminal matters, customs cooperation, police cooperation).

As noted, Article K.1 (7) defines judicial cooperation in criminal matters as a matter of common interest.

However, the transnational scale of much fraud and the fact that financial crime is spreading by means of criminal organizations which know how to exploit loopholes in the different legal systems and organize and distribute their illegal activities throughout the Member States and in third countries make it necessary to strengthen Member States' weapons to counter it.

Although Member States already have criminal law provisions to protect the Communities' financial interests in many areas, the comparative studies carried out have identified loopholes and incompatibilities which are prejudicial to the punishment of fraud and to judicial cooperation in criminal matters between Member States.

Given the current distribution of powers between Member States and the Communities, this Convention is designed to ensure greater compatibility between Member States' criminal law provisions by establishing minimum rules in criminal law, in order to make the fight against fraud affecting the Communities' financial interests more effective and even more dissuasive and to strengthen cooperation in criminal matters between the Member States.

By this Convention, on the basis of a single definition of fraud, Member States undertake in principle to make the conduct defined as fraud against the budget of the European Communities a criminal offence (Article 1) and to provide for criminal penalties including, at least in cases of serious fraud, penalties involving deprivation of liberty which can give rise to extradition (Article 2).

In addition, Member States are required to take the necessary measures so that heads of businesses or decision-makers may in certain cases be declared criminally liable (Article 3).

Article 4 lays down rules on the jurisdiction of Member States' courts, and Article 5 introduces rules on extradition and prosecution which break new ground.

Article 6 spells out the principle of closer judicial cooperation between Member States in criminal matters, notably in cases of transnational fraud.

Article 7 requires application of the *ne bis in idem* rule.

Article 8 specifies the conditions under which the Court of Justice of the European Communities will

exercise jurisdiction in the settlement of disputes between Member States and between Member States and the Commission.

Article 9 lays down the principle that the Convention does not prevent Member States from adopting internal legal provisions imposing more stringent obligations than those deriving from the Convention.

Article 10 introduces a system for communicating information between Member States and the Commission.

As with all Conventions drawn up pursuant to Article K.3 (2) (c) of the Treaty on European Union, no reservations are allowed unless expressly provided for in the Convention.

III. COMMENTARY ON THE ARTICLES

1. *Article 1: definition of fraud; criminal offence of fraud*

Article 1 introduces for the first time a definition of fraud affecting the Communities' financial interests ('fraud'), which will be common to the Member States. The extraordinary importance of this is confirmed by the fact that as regards Community administrative penalties, in the recitals of Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the Communities' financial interests[1], reference is made to fraudulent acts as defined in this Article.

Subject to Article 2 (2), Article 1 imposes on Member States a general obligation to define the fraudulent conduct which it describes chiefly as criminal offences in order to ensure a common minimum level of penal action against fraud committed by economic agents in Member States. This will ensure that punishment of fraud has full deterrent effect.

1.1. Paragraph 1

In order to cover various types of fraud, Article 1 (1) lays down two separate but matching definitions, one applying to expenditure, the other to revenue.

Expenditure means not only subsidies and aid directly administered by the general budget of the Communities but also subsidies and aid entered in budgets administered by the Communities or on their behalf. This basically means subsidies and aid paid by the European Acricultural Guidance and Guarantee Fund and by the Structural Funds (European Social Fund, European Regional Development Fund, European Agricultural Guidance and Guarantee Fund — Guidance Section, Financial Instrument for Fisheries Guidance, Cohesion Fund). The Development Fund administered by the Commission and the European Investment Bank are also included, as are certain funds not covered by the budget, and which are administered for their own account by Community bodies which do not have institutional status, such as the European Centre for the Development of Vocational Training or the European Environment Agency. Such aids and subsidies are not for personal use but are intended for the general purpose of financing the common agricultural policy, contributing to economic, social or cultural structural renewal or strengthening cohesion in the Union.

Revenue means revenue deriving from the first two categories of own resources referred to in Article 2 (1) of Council Decision 94/728/EC of 31 October 1994 on the system of the European Communities' own resources[2], i.e. levies in respect of trade with non-member countries in the framework of the common agricultural policy and contributions provided for in the framework of the common organization of the markets in sugar and customs duties in respect of trade with third countries. This does not include revenue from application of a uniform rate to Member States' VAT assessment base, as VAT is not an own resource collected directly for the account of the Communities. Nor does it include revenue from application of a standard rate to the sum of all the Member States' GNP.

[1] OJ No L 312, 23. 12. 1995, p. 1.

[2] OJ No L 293, 12. 11. 1994, p. 9.

For both expenditure and revenue, the aspects common to the definition of fraud are: the intentional nature of the act or omission constituting the fraud and the main elements constituting fraudulent conduct.

Intention must apply to all the elements constituting the offence, particularly to the action and the effect.

The principal elements of fraudulent conduct are use of false documents, failure to disclose information in breach of a specific obligation to do so under particular legal provisions, or misapplication of funds.

The distinction between fraud in respect of expenditure and fraud in respect of revenue is essentially one of effect: 'the misappropriation or wrongful retention of funds' in the case of expenditure, and the 'illegal diminution of resources' in the case of revenue.

The effect of misappropriation and wrongful retention is not required in the misapplication of funds as regards expenditure; this is because misapplication consists in the misuse of funds which, although legally obtained, may subsequently have been wasted or used for purposes other than those for which they were granted. Such instances of misapplication of funds may be considered as equivalent to wrongful retention.

1.2. Paragraph 2

Article 1 (2) requires Member States to adopt the necessary and appropriate measures in their internal criminal law to ensure that the conduct defined in paragraph 1 constitutes criminal offences. Member States will therefore have to check whether their criminal law as it stands does indeed cover all the fraudulent conduct defined in paragraph 1. If not, Member States will have to introduce one or more criminal offences, the constituent elements of which correspond to that conduct. They may make these specific or explicit criminal offences, or include them under a general offence of fraud.

Member States need not provide for criminal penalties for instances of minor fraud as described in Article 2 (2) of the Convention.

1.3. Paragraph 3

Article 1 (3) stipulates that the preparation or supply of false, incorrect or incomplete statements or documents having the effects referred to in paragraph 1 constitutes a criminal offence.

In principle, such conduct is *per se* to be a criminal offence; those alleged to have committed such acts or omissions would be prosecuted as authors of or parties to the offence.

However, where such conduct is not in itself a criminal offence in the Member States, prosecution must be possible at least on the charge of participation in, instigation of or attempt to commit fraud. For 'participation', 'instigation' and 'attempt', the definitions in national criminal law apply.

All the elements constituting the offence must be intentional, i.e. of the action and the effect.

1.4. Paragraph 4

Proof of intention may be inferred from objective, factual circumstances; this formula is taken from Article 3 (3) of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances adopted in Vienna on 16 December 1988 and Article 1 of Council Directive 91/308/EEC of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering[1] and refers to rules of evidence.

2. *Article 2: Penalties*

The exemplary and deterrent nature of criminal penalties as opposed to other possible forms of punishment make them the most efficient means of combating financial crime. That is the reason why Article 2 contains one of the fundamental principles of the Convention: Member States are required to lay down criminal penalties for the punishment of the conduct constituting fraud against the Communities' financial interests as defined in Article 1.

This requirement does not affect Member States' entitlement to apply administrative penalties in addition.

[1] OJ No L 166, 28. 6. 1991, p. 77.

In line with the case-law of the Court of Justice of the European Communities, the penalties must be proportionate, effective and dissuasive. However, Member States retain a margin of discretion in deciding the amount and the severity of criminal penalties.

Not all penalties will involve deprivation of liberty; for example, they may consist in fines or fines and the deprivation of liberty.

However, at least in instances of serious fraud, the Convention stipulates that Member States must lay down penalties involving the deprivation of liberty which can give rise to extradition. Apart from cases of fraud involving a minimum amount to be set in each Member State but not in excess of ECU 50 000, the Convention leaves it to Member States to define according to their own legal traditions the factual circumstances which define certain fraudulent conduct as elements constituting serious fraud.

Those circumstances may be, for example: recidivism; the level of organization of the fraud; the fact that the offender is a member of a criminal organization or a ring; the fact that the offender is a public servant or a national or Community civil servant; bribery of a civil servant; injury involving sums above a certain amount in ecus. However, each Member State is free to provide for penalties involving deprivation of liberty in the other cases of fraud.

Such penalties are imposed by criminal courts. However, in Austria some administrative authorities, in certain specific instances, have powers to impose criminal penalties involving the deprivation of liberty. The Austrian system as a whole may be considered as also meeting the obligation under Article 2 (1).

The participation in, instigation of and attempt to commit fraud must also be punishable by criminal penalties. These three concepts are defined in accordance with Member States' criminal law. Generally speaking, participation and instigation cover knowingly aiding and assisting the commission of the offence or prompting or inducing the commission of the offence.

By way of derogation from the principle stated in Article 2 (1), the second paragraph makes an exception to allow for some flexibility; in cases of minor fraud Member States may provide for non-criminal penalties; these are mainly administrative penalties.

Minor fraud within the meaning of the Convention involves a total amount of less than ECU 4 000 and the circumstances must not be particularly serious. The term 'particularly serious circumstances' is to be evaluated in the light of a Member State's national law and legal traditions.

Member States using the derogation under paragraph 2, which in cases of minor fraud permits them to provide for administrative penalties only, will in addition not be required to impose penalties for the participation in, instigation of or attempt to commit such fraud.

3. *Article 3: Criminal liability of heads of businesses*

Article 3 establishes the principle that heads of businesses exercising legal or effective power within a business are not automatically exempt from all criminal liability where fraud affecting the Communities' financial interests has been committed by a person under their authority acting on behalf of the business.

The Article requires each Member State to take the measures it deems necessary to allow heads of businesses or other persons having power to take decisions or exercise control within a business to be held criminally liable where the principles defined by its national law so permit, for example, if fraud has been committed by a person under the authority of those heads of business.

The Convention leaves Member States considerable freedom to establish the basis for criminal liability of decision-makers and heads of business.

As well as covering the criminal liability of heads of businesses or decision-makers on the basis of their personal actions (as authors of, associates in, instigators of or participants in the fraud), Article 3 allows Member States to consider making heads of businesses and decision-makers criminally liable on other grounds.

Within the meaning of Article 3 a Member State may make heads of businesses and decision-makers criminally liable if they have failed to fulfil a duty of supervision or control *(culpa in vigilando)*.

The criminal liability of heads of businesses could also be based on an offence, distinct from the fraud, of failure to fulfil an obligation under national law to exercise supervision or control.

The criminal liability of the head of a business or decision-maker could also attach to negligence or incompetence.

Lastly, nothing in Article 3 prevents Member States from providing for objective criminal liability to attach to heads of businesses and decision-makers by virtue of others' actions, without it being necessary to prove fault, negligence or failure to exercise supervision on their part.

4. *Article 4: Rules on the jurisdiction of Member States' courts*

The Convention lays down rules on jurisdiction enabling Member States' courts to prosecute and judge offences of fraud against the Communities' financial interests, in particular where such offences have been only partially committed within their territory.

Article 4 requires each Member State to establish the jurisdiction of its national courts in the three following situations:

1. Where fraud, participation in fraud or attempted fraud has been committed in whole or in part within its territory. This includes the situation in which the benefit of the fraud has been obtained in that territory.

2. Where a person within its territory has knowingly committed the offence of participating in or instigating ('knowingly assists or induces') fraud committed in the territory of another Member State or third country. As already stated in the commentary on Article 2, the terms 'participation' and 'instigation' are to be interpreted in accordance with national law.

   In some Member States broader definitions may apply: the United Kingdom, for example, has said that it will interpret 'assist' in the light of the concept of 'conspiracy' in its domestic law.

   It should be noted that where fraud has been committed in a third country, some Member States may require application of the principle of dual criminality in order to prosecute the offence of assisting or inducing fraud; the fraud must also be punishable by the foreign law.

   In addition, it is recognized that some Member States, for reasons of expediency or on legal grounds, will be unable to prosecute the offences of participating in or instigating fraud until the offence of fraud itself has been established by final decision of the court of the Member State or third country having jurisdiction.

3. Where the offender is a national of the Member State concerned, irrespective of where the offence was committed (Member State or third country).

   In order to establish jurisdiction, Member States may require that the condition of dual criminality be fulfilled.

   Not all Member States' legal traditions recognize such extra-territorial jurisdiction. Article 4 (2) therefore permits Member States to declare that they will not apply this provision.

5. *Article 5: Rules on extradition and prosecution*

The three extradition rules established in Article 5 are designed to supplement, in regard to the protection of the Communities' financial interests, the provisions on the extradition of own nationals and tax offences applying between Member States under bilateral or multilateral extradition agreements.

(a) Extradition of nationals of a Member State:

A number of Member States do not extradite their own nationals. Article 5 lays down rules to prevent persons alleged to have committed fraud against the Communities' financial interests going scot-free because extradition is refused on principle.

For the purposes of Article 5 'national' is to be interpreted in the light of the declarations made in Article 6 (1) (b) of the European Convention on Extradition of 13 December 1957 by the Parties to that Convention.

Article 5 firstly requires a Member State which does not extradite its own nationals to take the necessary measures to establish its jurisdiction over the offences defined and punished within the meaning of Article 1 and Article 2 (1) of this Convention when committed by its own nationals outside its territory. The offences may have been committed in another Member State or in a third country.

The instances of minor fraud which, pursuant to Article 2 (2), are punishable only by administrative penalties in some Member States are not covered by this Article.

In addition, if fraud has been committed in the territory of one Member State by a national of another Member State who cannot be extradited for the sole reason that the latter Member State does not extradite its own nationals, Article 5 requires the requested Member State to submit the case to its legal authorities for the purpose of prosecution. Thus, Article 5 (2) plainly sets out the principle *aut dedere aut judicare*. This provision is not, however, intended to affect national rules regarding criminal proceedings.

In order to apply this principle, the requesting Member State undertakes to transmit the files, information and exhibits relating to the offence to the Member State which is to prosecute its national. The requesting Member State will be kept informed of the prosecution and its outcome.

Article 5 sets no prior conditions on the proceedings brought by the requested Member State. No application from the requesting Member State is needed for the requested Member State to initiate the prosecution.

(b) Tax offences:

The Convention stipulates that extradition may not be refused for the sole reason that it has been requested in connection with a tax or customs duty offence.

For the Parties to the European Convention on Extradition, this constitutes a limitation on Article 5 of this Convention. 'Tax' covers revenue (taxes, duties) within the meaning of the European Convention on Extradition.

6. *Article 6: Cooperation between Member States*

In the face of complex fraud cases with international ramifications, cooperation between the Member States is of fundamental importance. Closer cooperation between Member States should facilitate the detection and punishment of fraud and enable the prosecution of a fraud case involving more than one country to be centralized in one Member State wherever possible.

Firstly, where two or more Member States are concerned by the same case of fraud against the Communities' financial interests, they are required to cooperate effectively at every stage of the procedure, and specifically in the investigation, prosecution and enforcement of the sentence.

The forms of cooperation in Article 6 (1) are cited as examples. The expression 'for example' was inserted in this provision to take account of the situation of Member States which are not Parties to all the relevant European Conventions on cooperation in criminal matters. The forms of cooperation listed as examples are: mutual legal assistance in criminal matters, extradition, transfer of proceedings and the enforcement of sentences passed in another Member State, allowing the most appropriate means of cooperation to be chosen in each specific case. The relevant Conventions currently applying between the Member States are not affected by the present Convention.

Article 6 (2) allows for the situation in which more than one Member State has jurisdiction to prosecute an offence connected with the same facts.

In such cases, this paragraph requires Member States to cooperate in deciding which of them is to have jurisdiction to prosecute. This provision should improve efficiency by enabling prosecutions to be centralized in a single Member State wherever possible.

Member States will be able to settle such conflicts of jurisdiction by reference, for example, to: the scale of the fraud committed in their respective territories, the place where the misapplied sums were obtained, the place where the suspects were arrested, their nationalities, previous prosecutions, and so on.

7. *Article 7:* Ne bis in idem

Paragraph 1 establishes the *ne bis in idem* rule.

This rule assumes particular importance in cases of transnational fraud which are liable for prosecution by courts in more than one Member State, when it has not been possible to centralize the prosecution in a single Member State by applying the principle laid down in Article 6 (2).

Paragraph 2 lists the declarations regarding exceptions for which limited provision is made under Conventions drawn up or applying between some Member States.

Paragraph 4 states that the principles applying between Member States and the declarations contained in bilateral or multilateral agreements remain unaffected by this Article.

Member States which are currently Contracting States or Parties to the abovementioned instruments will be required to renew declarations already made in connection with them.

It should also be noted that those Member States may not make any other declarations than those made earlier in connection with the said Conventions.

Member States which are not Parties to the abovementioned Conventions may also, if they so wish, make declarations relating exclusively to the exceptions referred to in paragraph 2 when giving the notification referred to in Article 11 (2).

8. *Article 8: Jurisdiction of the Court of Justice*

Article 8 (1) of the Convention specifies the conditions under which the Court of Justice of the European Communities will have jurisdiction to rule on disputes between Member States on the interpretation or application of the Convention.

It is stipulated in the paragraph that any dispute will in an initial stage be examined by the Council in accordance with the procedure set out in Title VI of the Treaty on European Union with a view to reaching a solution. If no solution is found within six months, a Member State party or the Member States parties to the dispute may refer the dispute to the Court of Justice of the European Communities for a ruling.

Article 8 (2) provides that, in disputes between one or more Member States and the Commission concerning Article 1 or Article 10, an attempt must first be made to reach a settlement through negotiation.

If negotiation fails, the dispute may be submitted to the Court of Justice of the European Communities.

Disputes between one or more Member States and the Commission concerning Article 1 and Article 10 which may be submitted to the Court of Justice are those which relate to the way in which a Member State has adopted the legislative acts required to ensure that certain types of conduct constitute criminal offences or the way in which the Member State has fulfilled its obligation to communicate certain information to the Commission.

The Court of Justice has no jurisdiction whatsoever to challenge decisions by national courts (in cases concerning infringement of the Convention or of national provisions implementing the Convention).

The High Contracting Parties may, if they so wish, subsequently set out in an additional protocol the arrangements for any exercise by the Court of Justice of jurisdiction to give preliminary rulings concerning the interpretation of the provisions of the Convention [1].

[1] At its meeting on 28 and 29 November 1996 the Council adopted the Act drawing up, on the basis of Article K.3 of the Treaty on European Union, the Protocol on the interpretation, by way of preliminary rulings, by the Court of Justice of the European Communities of the Convention on the Protection of the European Communities' Financial Interests (11899/96 JUR 348 COUR 21 + COR 1 (d), COR 2 (en), REV 1 (ga)).

9. *Article 9: Internal provisions*

The Convention is a starting-point only. Article 9 therefore states the principle that no provision in this Convention shall prevent Member States from adopting internal legal provisions which go beyond the obligations deriving from this Convention or from concluding agreements pursuant to Article K.7 of the Treaty on European Union.

Member States may for example broaden the moral element under Article 1 (1) to include gross negligence or decide that the effects specified under Article 1 (1) (a) and (b) are not required for prosecution of the offence.

In addition, Member States may, in the matter of sanctions, decide that all instances of fraud will be punishable by penalties involving the deprivation of liberty.

10. *Article 10: Transmission*

Article 10 introduces arrangements for communicating information from Member States to the Commission. Within the meaning of paragraph 1, Member States must transmit to the Commission the texts of the provisions transposing into their domestic law the obligations imposed on them under the Convention.

Paragraph 2 provides that, without prejudice to the obligations under Community Regulations and pursuant to Article K.3 (2) (c) of the Treaty on European Union, Member States are to exchange among themselves or with the Commission information on the implementation of the Convention; that information and the arrangements for communicating or exchanging it are to be determined by the Council.

It was decided that decisions on these points would be adopted by the High Contracting Parties acting by a two-thirds majority. Account may be taken, in particular, of national rules on the secrecy of preliminary investigations, professional secrecy and the protection of computerized personal data.

11. *Article 11: Entry into force*

Article 11 provides for the Convention to enter into force in accordance with the relevant rules established by the Council. The Convention will enter into force 90 days after the notification referred to in paragraph 2 by the last Member State to fulfil that formality.

12. *Article 12: Accession*

Article 12 stipulates that the Convention is open to accession by any State that becomes a member of the European Union and it lays down the rules governing such accession.

If the Convention is already in force when the new Member State accedes to it, it will enter into force in respect of that Member State 90 days after the deposit of its instrument of accession. If, on expiry of that period of 90 days, the Convention has not yet entered into force, it will enter into force in respect of that Member State on the date of its general entry into force laid down in Article 11.

It is to be noted that if a State becomes a member of the European Union before the general entry into force of the Convention but does not immediately accede to the Convention, the Convention will none the less enter into force as soon as all the States which were members of the European Union when the Act drawing up the Convention was adopted by the Council have deposited their instruments of ratification.

EXPLANATORY REPORT

on the Convention on the accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden to the Convention on the Law applicable to Contractual Obligations, opened for signature in Rome on 19 June 1980, and to the first and second Protocols on its interpretation by the Court of Justice

(Text approved by the Council on 26 May 1997)

(97/C 191/02)

INTRODUCTION

The Convention on the Law applicable to Contractual Obligations, opened for signature in Rome on 19 June 1980 (Rome Convention of 1980), lays down uniform choice-of-law rules to apply within its specific area of application. These rules constitute an important supplement to the Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters of 27 September 1968 (1968 Brussels Convention). Pursuant to Article 28 of the Rome Convention of 1980, that Convention may be signed (only) by States party to the Treaty establishing the European Economic Community.

In order that the rules thus uniformized may be also applied to the new Member States which, in acceding to the European Union, undertook to accede also to the Rome Convention of 1980, the Permanent Representatives Committee agreed on 1 February 1996 to set up a working party to prepare the accession of the three new Member States to the 1968 Brussels and the 1980 Rome Conventions and the Protocols thereto as adapted and amended by subsequent accession conventions. Over two meetings, the Working Party drafted the technical amendments necessary for the accession of the three States in question.

A technical adjustment is also made to the first Protocol on the interpretation by the Court of Justice of the European Communities of the Convention on the Law applicable to Contractual Obligations, signed on 19 December 1988, hereafter referred to as the 'first Protocol of 1988', listing the supreme courts in the acceding States.

The first Protocol of 1988 and the Protocol conferring on the Court of Justice of the European Communities Certain Powers to Interpret the Convention on the Law applicable to Contractual Obligations signed on 19 December 1988 and hereafter referred to as the 'second Protocol of 1988' (together commonly referred to as the '1988 interpretative protocols'), are designed to ensure uniform interpretation of the Rome Convention of 1980. They have not yet entered into force.

Austria's proposal that the Accession Convention be used as an opportunity to extend the consumer protection provisions in Article 5 of the Rome Convention of 1980 aroused interest in the Working Party. However, it emerged that this was a rather complex issue that would require detailed consideration, and would therefore hold up completion of the proceedings. When adopting the Accession Convention on 29 November 1996, the Conference of Governments of the Member States accordingly approved a declaration by the Austrian delegation advocating early consideration of this question. That declaration was annexed to the minutes of the Conference.

The Accession Convention contains final provisions. Lastly, the Accession Convention contains an adjustment to the Protocol annexed to the Rome Convention of 1980 which, in addition to Denmark, now also allows Sweden and Finland to retain their national provisions concerning the law applicable to the carriage of goods by sea.

TITLE I

General provisions

Article 1

This provision expressly provides for the accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden and specifies the three instruments concerned, namely the Rome Convention of 1980 and the first and second Protocols of 1988.

The Rome Convention of 1980 was amended by two previous accession conventions: the Convention, hereafter referred to as the '1984 Accession Convention' signed in Luxembourg on 10 April 1984 on the Accession of the Hellenic Republic, and the Convention, hereafter referred to as the '1992 Accession Convention' signed in Funchal on 18 May 1992 on the Accession of the Kingdom of Spain and the Portuguese Republic. It is to this amended version of the Rome Convention of 1980 that the three new Member States are acceding.

TITLE II

Adjustments to the Protocol annexed to the Rome Convention of 1980

Article 2

Article 21 of the Rome Convention of 1980 allows Member States to retain diverging national provisions if they are based on an international convention to which the State in question is a party. The Danish choice-of-law rules on the carriage of goods by sea diverge from the Rome Convention of 1980 but accord with legislation in the other Nordic countries. However, the uniformization of provisions achieved amongst the Nordic countries in this sphere was (in the customary manner) not based on an international convention, but secured through the simultaneous enactment of identically worded laws by those countries' parliaments, so that Article 21 does not apply in this case, although the uniformization thus achieved is entirely similar in effect to that resulting from an international convention. To enable Denmark to retain these common provisions, a Protocol to that effect was annexed to the Rome Convention of 1980.

As Sweden and Finland took part in the Nordic countries' uniformization of rules and should therefore be treated in the same manner as Denmark, Article 2 now extends this Protocol to Sweden and Finland, and the references to the relevant Danish provisions are updated.

However, the Member States thought it advisable to make a joint declaration, which is annexed to the Convention, in which they take note that Denmark, Finland and Sweden state their readiness to examine the extent to which they will be able to ensure that any future amendment concerning their national law applicable to questions relating to the carriage of goods by sea complies with the procedure provided for in Article 23 of the Rome Convention of 1980.

TITLE III

Adjustments to the first Protocol of 1988

Article 3

Article 2 (a) of the first Protocol of 1988 lists the supreme courts in the Member States which may submit questions of interpretation to the Court of Justice of the European Communities for a preliminary ruling. The supreme courts in the new Member States are now added to that list.

TITLE IV

Final provisions

Articles 4 to 8

The final provisions, modelled on the 1984 and 1992 Accession Conventions, give the Finnish and Swedish versions of the Rome Convention of 1980 and the First and Second Protocols of 1988 the same legal status as the other language versions, stipulate the need for ratification of the Accession Convention by the Signatory States, contain provisions on its entry into force, and specify that the Accession Convention is equally authentic in all 12 official languages.

When the Accession Convention was signed, the texts of the Rome Convention of 1980, the first and second Protocols thereto, and the amendments resulting from subsequent accessions, were drawn up in Finnish and Swedish.

CONVENTION

relating to extradition between the Member States of the European Union

EXPLANATORY REPORT

(Text approved by the Council on 26 May 1997)

(97/C 191/03)

1. GENERAL CONSIDERATIONS

(a) At the ministerial meeting at Limelette on 28 September 1993, the Ministers of Justice of the Member States agreed on a declaration, subsequently adopted by the Justice and Home Affairs Council at its meeting on 29 and 30 November 1993, whereby it empowered the competent bodies of the European Union to examine the advisability for the Member States to conclude among themselves an extradition convention to supplement the 1957 European Convention on Extradition of the Council of Europe and to amend certain of its provisions.

For that purpose, a work programme was outlined providing for the examination of both extradition procedures and substantive conditions of extradition, with a view to making them simpler and faster and therefore facilitating the granting of extradition.

On 10 June 1994 the Council, in the light of the work carried out till then, decided that attention should first be paid to the specific questions that arise from proceedings in which persons consent to their own extradition. The Convention on the simplified extradition procedure, concerning the extradition of consenting persons, was thus drawn up by the Council and signed by all Member States on 10 March 1995 [1].

Subsequently, work continued on the remaining items of the original programme, on the basis of a set of draft articles which eventually included various provisions of a procedural as well as of a substantive character. Above all, the latter required the political intervention of the Council, which on various occasions gave precise instructions to the organs involved in drawing up the text.

On 27 September 1996, the Convention relating to Extradition between the Member States of the European Union was drawn up by the Council and signed on the same date by all Member States [2].

The Convention consists of a preamble, 20 articles and six declarations contained in an annex which forms an integral part of the Convention.

(b) The reasons behind the development of the convention are stated clearly in the preamble.

As shown by the declaration adopted in 1993, the Council, from the start of the activities carried out under Title VI of the Treaty on European Union to improve judicial cooperation in criminal matters, held that extradition plays a fundamental role in facilitating the exercise of criminal jurisdiction by Member States.

At the same time, it was unanimously held that the considerable similarities in the criminal policies of Member States, and, above all, their mutual confidence in the proper functioning of national justice systems and, in particular, in the ability of Member States to ensure that criminal trials respect the obligations stemming from the Convention for the Protection of Human Rights and Fundamental Freedoms, justified a revision also of the fundamental aspects of extradition (conditions for extradition, grounds for refusal, rule of speciality, etc.).

The activity carried out within the framework of Title VI of the Treaty concerning various serious forms of crime, moreover, made it increasingly clear that, as far as extradition is concerned, only decisive intervention affecting substantive conditions would bring about a significant improvement of cooperation in the most important criminal proceedings, such as those for terrorist crimes or organized crime.

[1] OJ No C 78, 30. 3. 1995, p. 1.

[2] OJ No C 313, 23. 10. 1996, p. 11.

On this basis, therefore, it was possible to develop those articles of the Convention, relating to dual criminality, political offences, extradition of nationals and matters connected with the rule of speciality, which (more than the other provisions, however important) make the new instrument a genuine innovation for extradition, in full keeping with the general desire of the European Union to adapt the whole sector of judicial cooperation in criminal matters to the needs of today and tomorrow.

The desired adaptation leads to changes requiring the review of provisions in national legislation and sometimes even to the constitution of Member States. The goal is set in the different articles. Some of these articles allow for the possibility of making reservations. This possibility, however, has been restricted as much as possible. The most important reservations either have a limited content (as is the case for the political offence reservation in Article 5), or allow full derogation from the new principle, but give rise to an alternative obligation for the Member State entering them (this being the case for Article 3 on dual criminality), or are subject to a special regime of temporary validity to facilitate reconsideration of the matter by the Member State which entered the reservation (this being the case for the reservation to Article 7 governing extradition of nationals). Furthermore, the possibility of a periodical revision of all reservations, including those not subject to the said regime of temporary validity, is provided for in the Declaration of the Council on follow-up attached to the Convention.

(c) Already in its declaration of 1993, the Council held that the new instrument should not replace the existing conventions, but supplement them. This supplementary nature of the new Convention is stated in Article 1, and partly addressed in the preamble, where it is specified that the provisions of existing conventions remain in force for all matters which are not governed by this Convention. Thus, this Convention does not contain an obligation to extradite. Such obligation is to be found in the 'mother' conventions.

This approach, which means that the text focuses on aspects genuinely demanding change, results in the outcome that the European systems of extradition will be a web of various complex sets of Treaty rules, not valid for all States, which will interact with national legislation. For this reason, *inter alia*, the Council, in its declaration on follow-up, stated that it will periodically examine not only the functioning of this Convention, but also 'the general operation of extradition procedures between the Member States', which include the other conventions and national practices.

2. COMMENTS ON INDIVIDUAL ARTICLES

Article 1 — General provisions

The purpose of the Convention is to supplement and facilitate the application, *inter alia* in accordance with Article 28 (2) of the European Convention on Extradition, between the Member States, of certain international instruments in the field of extradition to which some or all of the Member States have become Parties. These instruments are listed in Article 1 (1) of this Convention.

The instruments mentioned in the said paragraph 1 are partly 'mother conventions' (the European Convention on Extradition and the Benelux Treaty) and partly supplementary instruments to those conventions (the European Convention on the Suppression of Terrorism and the Convention applying the Schengen Agreement).

This Convention is a supplementary convention to all these agreements. Therefore, it cannot be used as the sole legal basis for extradition. As is noted in the general considerations to this explanatory report, a further consequence of placing this Convention in the framework of the European Convention on Extradition and the other instruments mentioned above, is that the provisions of those Conventions remain in force for all matters not covered by this Convention. Similarly, all reservations and declarations to those Conventions are still applicable between Member States that are parties to this Convention to the extent that they are related to matters that are not regulated by the said Convention.

In this connection, attention should be drawn to the declaration made by Portugal, annexed to this Convention, relating to Portugal's reservation to Article 1 of the European Convention concerning Extradition requested for an offence punishable by a life sentence or detention order. In that declaration,

Portugal stated that it will grant extradition for such offences only if it regards as sufficient the assurances given by the requesting Member State that it will encourage the application of any measures of clemency to which the person sought might be entitled. It is pointed out in the declaration that Portugal will grant extradition under such condition in compliance with the relevant provisions of its constitution and the related interpretation of them by its Constitutional Court. At the same time, Portugal reaffirmed in the declaration that Article 5 of the Convention on Portuguese Accession to the Convention applying the Schengen Agreement remains valid.

The supplementary character of this Convention also means that where it deals with a matter which is also dealt with in the conventions mentioned in paragraph 1 and the provisions conflict, the provisions of this Convention prevail. This is true even where declarations or reservations have been made to those other conventions unless it is expressly stated otherwise in this Convention. Where appropriate, this explanatory report indicates the relationship between this Convention and the other conventions.

There is also, as noted in the preamble, a link between this Convention and the Convention on simplified extradition procedure between the Member States of the European Union although this link is not specifically referred to in Article 1. When both Conventions have entered into force, there will be situations where the two instruments apply simultaneously since some of the issues dealt with in this Convention may arise also when the person sought gives his consent to the extradition.

This Article of the Convention has been worded differently to the corresponding Article 1 of the Convention on simplified extradition procedure because of the difference in the content and nature of the two instruments, although they both supplement existing conventions. In particular, this Convention modifies the conditions for extradition to a certain degree between the Member States by changing the existing legal regime for extradition as it operates on the basis of the 'mother' conventions. The Convention on simplified extradition procedure, on the other hand, regulates the procedural aspects of some extradition cases which were not dealt with by the 'mother' conventions.

Paragraph 2, which should be read in conjunction with Article 28 (3) of the European Convention on Extradition, provides that paragraph 1 shall not affect the application of provisions in bilateral or multilateral agreements which offer Member States more favourable extradition arrangements, nor extradition agreements agreed on the basis of uniform laws (as for instance in the relationship between the Nordic countries), nor extradition agreements based on reciprocal laws providing for the execution in the territory of a Member State of warrants of arrest issued in the territory of another Member State (as for instance in the relationship between the United Kingdom and Ireland).

Article 2 — Extraditable offences

Paragraph 1 specifies what offences are extraditable. The number of extraditable offences will most probably increase significantly through the application of this Article.

This paragraph provides that the offences must be punishable under the laws both of the requesting Member State and the requested Member State, so reaffirming the rule of double criminality already contained in the 'mother' conventions (a special exception to that rule is dealt with in Article 3). It also changes the minimum penalty required for extradition, which is deprivation of liberty or a detention order for a maximum period of at least 12 months in relation to the law of the requesting Member State. This has been reduced to six months in relation to the law of the requested Member State.

The one-year limit is the normal threshold under the European Convention on Extradition, but it is subject to reservations expressed on the matter by some States at the time of ratification. It follows from Article 17 of this Convention that reservations may not be made in this respect. This threshold of one year is also in line with the solution adopted in Article 61 of the Convention applying the Schengen Agreement. Article 2 (1) of the Benelux Treaty provides for a threshold of six months in relation to the law of the requesting State, thus prevailing over this Convention because of its more favourable extradition nature, in so far as extradition arrangements are concerned between States parties to that Treaty.

The threshold of six months in relation to the requested Member State is an innovation for most Member States.

In so far as paragraph 2 is concerned, certain Member States have refused to grant extradition because their national laws do not provide for detention orders

comparable in nature to that on the basis of which extradition was requested, although those Member States have not entered any reservations in respect of Article 25 of the European Convention on Extradition. Paragraph 2 was drafted to make the legal situation clear so that extradition may not be refused between Member States on those grounds.

Paragraph 3 deals with accessory extradition and contains a provision similar to that of Article 1 of the second Protocol to the European Convention on Extradition. On the basis of this paragraph the requested Member State shall also have the right to grant extradition for offences which do not fulfil the conditions for extradition under paragraph 1 but which are punishable by fines. It has been considered that the grounds for non-extradition fall when the person sought is to be extradited for a serious offence which fulfils the conditions of paragraph 1. In this case the person in question ought not to escape prosecution for lesser offences and the courts of the requesting Member State will be in a position to pass a judgment on him for all the offences.

Another aspect of the question of non extraditable offences punishable by fines is governed by Article 10 (1), which deals with cases where the request for extradition did not include such offences, but the requesting Member State may act in relation to them after the person has been extradited.

Article 3 — Conspiracy and association to commit offences

Since 1993, the European Union, within the framework of its measures against the most serious forms of crime, has held in particular that high priority should be given to the most serious forms of organized crime and terrorism. In this context, it has often been established that the domestic laws of the Member States lack homogeneous provisions criminalizing the aggregation of two or more persons with a view to committing crimes. This is due to different legal traditions but does not amount to differences in criminal policy. These differences may make judicial cooperation more difficult.

In particular, the differences between the various forms of association to commit offences covered by the criminal laws of Member States and those between the various forms of conspiracy, and even more the differences between offences of criminal association on the one hand and offences of conspiracy on the other, appeared to be particularly sensitive in the field of extradition in that, due to the lack of the necessary dual criminality, extradition may be prevented for crimes relevant to the fight against organized crime in all its forms.

Article 3 is intended to remedy this difficulty by providing an exception to the rule of dual criminality, derogating from Article 2 (1), of this Convention and from the corresponding Article 2 of the European Convention on Extradition and Article 2 of the Benelux Treaty. To that effect paragraph 1 states that where the offence for which extradition is requested is classified by the law of the requesting Member State as an association to commit offences or a conspiracy, extradition may not be refused on the sole ground that the law of the requested Member State does not provide for the same conduct to be an offence. It is self-evident that the other grounds for refusal in this Convention or in other applicable conventions remain in force.

However, this important provision is subject to two conditions, both indicated in paragraph 1. The first is that the offence must, under the law of the requesting Member State, be punishable by a maximum term of deprivation of liberty or a detention order of a maximum of at least 12 months. For greater clarity, the threshold already indicated in Article 2 is explicitly reaffirmed.

The second is that the criminal association or the conspiracy must have as its objective the commission of:

(a) 'one or more of the offences referred to in Articles 1 or 2 of the European Convention on the Suppression of Terrorism;' or

(b) 'any other offence punishable by deprivation of liberty or a detention order of a maximum of at least 12 months in the field of drug trafficking and other forms of organized crime or other acts of violence against the life, physical integrity or liberty of a person, or creating a collective danger for persons.' Paragraph 2 indicates the documentation which forms the basis on which the requested Member State shall decide whether this second condition is met.

The conditions show that the exceptional derogation from the requirement of dual criminality is justified and applies only in respect of particularly serious criminal associations or conspiracies and that the assessment of such seriousness must be based on the nature of the offences which are the aim of those persons who conspire, establish or take part in a criminal association. The offences regarded in this connection as serious by this Convention belong to three categories: terrorist offences, offences related to organized crime, including drug-trafficking offences and violent offences.

By contrast, paragraph 1 does not contain a definition of criminal association or conspiracy, it being enough that the offence on which a request for extradition is based is classified as a criminal association or a conspiracy by the law of the requesting Member State.

However, since the principle of dual criminality is an established principle of extradition law for many Member States, it was considered appropriate to provide an alternative solution to paragraph 1. To that end, paragraphs 3 and 4 provide for a combination of a reservation to paragraph 1 and an obligation to make the behaviour described in paragraph 4 extraditable under the terms of Article 2 (1).

Pursuant to paragraph 3, a Member State may reserve the right not to apply paragraph 1, or to apply it under certain conditions to be specified in the reservation. The Member State entering a reservation is free to decide on the content of such conditions.

Where a reservation has been made, with or without conditions, paragraph 4 will apply. This paragraph describes behaviour which Member States will make extraditable in their national law. For this purpose, without using concepts such as criminal association or conspiracy, a series of objective elements is used:

— it must be behaviour contributing to the commission by a group of persons acting with a common purpose of one or more offences of the types mentioned in paragraph 4,

— the contribution may be of any nature and it will be a matter of objective evaluation in a given case whether the behaviour contributes to the commission of one or more offences. As it is stated in this paragraph, the behaviour need not consist of the participation of the person in the actual execution of the offence or offences concerned. The contribution can in fact, be ancillary in nature (mere material preparation; logistic support to the movement or harbouring of persons and similar conduct). The paragraph does not provide that the purson contributing to the commission of the offence must be a 'member' of the group. Therefore, if a person having no part as a member of a closely organized group contributes to the criminal activity of the group, either occasionally or permanently, also this kind of contribution shall be covered by the provision in question, provided the other elements constituting the contribution, as indicated in paragraph 4, exist,

— as stated in the paragraph, 'contribution shall be intentional and made having knowledge either of the purpose and the general criminal activity of the group or of the intention of the group to commit the offence or offences concerned'. This text qualifies the contribution in two ways: firstly, the contribution must be intentional, so non intentional contributions are excluded. Secondly, the nature of criminal groups and the circumstances whereby the contribution is given vary and so there is a requirement that an element of knowledge is specified. In this regard the text provides that the element of knowledge shall be based on knowledge either of the purpose and general criminal activity of the group or of the intention of the group to commit one or more of the offences concerned,

— the offences of a group, to the commission of which a person contributes, are the same as those referred to in paragraph 1 (a) and (b). Also in this case, the particular obligation of the provision in question is justified in the light of the seriousness of the offences committed or planned by the group.

Article 4 — Order for deprivation of liberty in a place other than a penitentiary institution

Article 12 of the European Convention on Extradition provides for an extradition request to be based on a judgment of conviction involving deprivation of liberty, on a detention order, or, in the event of an extradition for the purpose of prosecution, on a warrant of arrest or other order having the same effect. Under these orders a person is usually deprived of his liberty in a penitentiary institution.

However, new types of measures to restrict personal liberty in view of proceedings or even in place of serving sentences have been developed or are likely to be developed in the future. In some Member States the law allows the judicial authorities to resort to

house arrest, or in any case, no matter what the measure is called, provides for a person to be deprived of his liberty in a place other than a penitentiary institution.

Since under those laws deprivation of liberty in a place other than a penitentiary institution is equivalent in purpose and legal regime to deprivation of liberty in a penitentiary institution, differing only in the place where the person is held in custody, it has been considered that this different procedure should not have a negative effect on extradition.

In order to avoid a narrow interpretation of the aforesaid Article of the European Convention on Extradition or the corresponding Article 11 of the Benelux Treaty being an impediment to extradition, Article 4 establishes that extradition cannot be refused only because the order on which the request is based provides for deprivation of liberty in a place other than a penitentiary institution.

This provision does not require that the national rules on arrest and deprivation of personal liberty be changed, not even with regard to extradition; nor does it change the other conditions for the granting of extradition, or the refusal thereof.

When requesting an extradition, it may be useful, in the interest of the requesting Member State, to explain the scope and legal nature of house arrest or of a similar order on which the request is based, especially when the deprivation of liberty in a place other than a penitentiary institution is not provided for in the requested Member State.

Article 5 — Political offences

Member States' common commitment to preventing and combating terrorism, often stressed by the European Council, and the consequential need to improve judicial cooperation for the purpose of precluding the risk of such conduct escaping punishment, led to a review of the question of political offences in relation to extradition.

In view of similarity in the political concepts between Member States and the basic trust in the functioning of the criminal justice systems in the Member States, it was logical to look again at whether the political offence exception should continue to be applied as a ground for refusal of extradition among Member States of the European Union. Article 5 was the outcome of this review.

The significant changes introduced by the new provisions are to be read in conjunction with the Joint Declaration of Member States attached to the Convention on the Right of Asylum (1951 Convention relating to the Status of Refugees, as amended by the 1967 New York Protocol) in which it is stated the relation between this Convention and the provisions on asylum contained in the constitutions of some Member States and the relevant international instruments.

Article 5 reflects a dual approach: on the one hand, paragraph 1 provides that for the purpose of extradition no offence may be regarded as a political offence; on the other hand, in paragraph 2, when admitting that a derogation may be made to this principle by means of a reservation, it specifies that a reservation concerning terrorist offences cannot be made. The aforesaid principle thus remains unprejudiced in this area.

Article 3 of the European Convention on Extradition and Article 3 of the Benelux Treaty exclude extradition for political offences. The European Convention on the Suppression of Terrorism contains in its Article 1 an exception to those rules, by providing for an obligation that an offence listed in that Article cannot be regarded as a political offence, or as an offence connected with a political offence or as an offence inspired by political motives. Furthermore the latter convention allows in Article 2 a State party to decide not to regard as such type of offences any serious offence involving an act of violence, other than one covered in Article 1, against the life, physical integrity or liberty of a person or a serious offence involving an act against property if the act created a collective danger for persons as well as in cases of an attempt to commit any of the foregoing offences or of participation as an accomplice of a person who commits or attempts to commit such an offence.

Paragraph 1 of this Article envisages the complete removal of the possibility of invoking the political offence exception.

Paragraph 1 takes up the wording of Article 1 of the European Convention on the Suppression of Terrorism, but the provision is no longer restricted to a list of offences. Paragraph 1 of this Convention thus prevails over Article 3 (1) of the European Convention on Extradition and Article 3 (1) of the Benelux Treaty, as well as over Articles 1 and 2 of the European Convention on the Suppression of Terrorism.

As stated in paragraph 3, paragraph 1 of this Article does not amend in any way the provisions of Article 3 (2) of the European Convention on

Extradition of those of Article 5 of the European Convention on the Suppression of Terrorism. Under those provisions, which may therefore be fully applied, the requested Member State may continue to refuse extradition if it has been requested for the purpose of prosecuting or punishing a person on account of his race, religion, nationality or political opinion, or if that person's position may be prejudiced for any of these reasons.

The possibility that these circumstances will apply between the Member States of the European Union in the course of an extradition procedure is probably academic. However, since respect for fundamental rights and liberties is an absolute principle of the European Union and, as already said, lies behind the progress which the Union intends to accomplish this Convention, it was considered that the text should not depart from the aforesaid traditional rule of protecting persons against criminal proceedings affected by political discrimination and that the validity of that rule had to be explicitly stressed.

Paragraph 3 is also mentioned in the Declaration, annexed to the Convention, in which the Hellenic Republic specifies that from the standpoint of the provisions of that paragraph, it is possible to interpret the whole Article in compliance with the conditions of the Greek constitution.

Paragraph 2, as stated before, provides that each Member State may make a reservation limiting the application of paragraph 1 to two categories of offences:

(a) those specified in Articles 1 and 2 of the European Convention on the Suppression of Terrorism (which cover the most serious offences, such as the taking of hostages, the use of firearms and explosives, acts of violence against the life of liberty of persons or which create a collective danger for persons);

(b) the offences of conspiracy or criminal association to commit one or more of the offences referred to in the preceding paragraph (a).

With regard to these last mentioned categories, this Convention goes beyond the scope of Article 1 (f) of the European Convention on the Suppression of Terrorism which is limited to an attempt to commit any of the offences of Article 1 or participation as an accomplice of a person committing or attempting to commit them.

Contrary to what is contained in Article 3 (1) of this Convention, the conspiracy and association referred to in paragraph 2 (b) of this Article are considered only in so far as they constitute behaviour corresponding to the description contained in Article 3 (4).

Finally, paragraph 4 completes the provisions of the Article providing that the reservations made under Article 13 of the European Convention on the Suppression of Terrorism shall no longer apply. Paragraph 4 is valid both for Member States which fully apply the principle specified in paragraph 1 as well as for those that make the declaration under paragraph 2.

Article 6 — Fiscal offences

Article 5 of the European Convention on Extradition and Article 4 of the Benelux Treaty provide that extradition for fiscal offences shall be granted only if States parties have so decided in respect of any such offence or category of offences. Article 2 of the second additional Protocol to the European Convention lifts the restriction set out in Article 5 of that Convention, but the Protocol has not been ratified by all Member States and does not apply between Member States for which extradition arrangements other than the European Convention are in force. Article 63 of the Convention applying the Schengen Agreement partly lifts the restriction for fiscal offences.

Paragraphs 1 and 2 provide for all Member States the same legal regime as that of the second Protocol to the European Convention, thus prevailing over the previously indicated Articles of the European Convention and the Benelux Treaty as well as the Convention applying the Schengen Agreement.

Paragraph 1 lays down the principle that extradition shall also be granted for fiscal offences which correspond under the law of the requested Member State to a similar offence.

As the laws of the Member States may differ in respect of constituent elements of the various offences connected with taxes, duties, customs and exchange, it has been considered appropriate to allow a wide margin of appreciation to the requested Member State to assess whether an offence exists under its law which corresponds to the offence for which extradition is sought. Therefore, for the dual

criminality requirement to be met, it is sufficient if an offence is considered to be 'similar' (*).

Paragraph 2 lays down a similar rule to that provided for in the second Protocol (**) which provides that extradition may not be refused on the ground that the law of the requested Member State does not impose the same type of fiscal levies as the law of the requesting State. Here again, the basic idea is that the essential constituent elements of the offence shall be decisive for ascertaining the application of the dual criminality principle.

Paragraph 3 allows for a reservation to be made in respect of offences which are not connected with excise, value-added tax or customs, which can be excluded from the scope of application of the Convention. By contrast, in respect of offences connected with excise, VAT or customs, paragraph 1 of the Article cannot be derogated from through the use of the reservation possibility. Where a reservation has been made, this is also relevant in relation to Article 10 as provided for in paragraph 4 of that Article.

Member States that are Parties to the second Protocol may not prescribe a more restrictive system for extradition in connection with fiscal offences than that which they have already agreed to under the second Protocol. It follows from this principle that Member States that are parties to the second Protocol and who did not enter a reservation to Article 2 of the said Protocol cannot make the declaration provided for by paragraph 3.

Article 7 — Extradition of nationals

This Article should be read in conjunction with the declaration by the Council on the concept of nationals and the declaration by Denmark, Finland and Sweden concerning Article 7 of this Convention.

Few Member States extradite their own nationals. Article 6 of the European Convention provides for a discretionary refusal on grounds of nationality and Article 5 of the Benelux Treaty explicitly excludes extradition of nationals. Some Member States have constitutional barriers to extradition of nationals and others have a legislative prohibition.

Paragraph 1 establishes the principle that extradition may not be refused on the ground that the person claimed is a national of the requested Member State within the meaning of Article 6 of the European Convention on Extradition. This is an important step towards removing one of the traditional bars to extradition among Member States. The reasons for this change, as already emphasized in the general part of the explantory report, are to be found in the shared values, common legal traditions and the mutual confidence in the proper functioning of the criminal justice systems of the Member States of the European Union.

The Article does not define the term 'national' of a Member State but makes a reference to Article 6 of the European Convention on Extradition. That Article provides that each Party may, by a declaration, define the term 'nationals'.

Declarations in this respect have been made by several Member States, i.e. Denmark, Finland and Sweden. These three Member States have defined nationals as nationals of the Nordic States (Denmark, Finland, Iceland, Norway and Sweden) as well as aliens domiciled in the territory of one of those States. These declarations have been found to be too far-reaching. Therefore, within the context of this Convention, Denmark, Finland and Sweden, confirm, through the declaration annexed to the Convention that, in their relations with other Member States which ensure equal treatment, they will not invoke the definition of nationals made under the European Convention as a ground for refusal of extradition of residents from non-Nordic States.

Paragraph 2 provides for the possibility to derogate from the general principle laid down in paragraph 1. The reservation possibility in this regard was considered appropriate since the prohibition of extradition of nationals is established in constitutional law or in national laws which are based on long-standing legal traditions, the change of which appears to be a complex matter. However, paragraph 3 provides for a system which will encourage a review of the reservations made.

Under paragraph 2, the reservation is made by declaring that extradition of nationals would not be

(*) The fact that the second Protocol uses, the terms 'an offence of the same nature' in the authentic English version and not 'similar offence' as in this Convention, is not intended to create any difference between the system based on the two instruments but is merely due to technical reasons.

(**) The fact that the English text of the Convention is not exactly the same as the authentic English text of the second Protocol is merely due to technical reasons.

granted or only granted under certain specified conditions, whose content is left to the discretion of each Member State which makes the declaration. For example, the Member State may indicate that it will not extradite its nationals for execution of sentences and that it will extradite them for purposes of prosecution only on condition that the person extradited must, if sentenced, be transferred back to it with a view to the enforcement of the senntence. Furthermore, a Member State may indicate that it will always apply to extradition of its own nationals the principle of dual criminality, the rule of speciality and the ban on re-extradition to another Member State.

In this connection, the declaration of the Council on the concept of 'nationals' should be recalled. Under such declaration, the concept of national used under this Convention will not affect any different definitions operated or given under the Council of Europe Convention of 21 March 1983 on the Transfer of Sentenced Persons. This declaration does not prejudice any reservation made under the present Convention.

Paragraph 3 provides for the reservation to be valid for five years and for renewals for successive periods of the same duration. During this period, each Member State may, at any moment, withdraw in whole or in part a reservation which it has made. The paragraph provides for procedures which guarantee that reservations will not automatically expire without the Member State having been duly notified twice by the depositary of the Convention.

This procedure will have the following features. 12 months before the expiry of each period of five years, the depositary shall give notice to the Member State concerned of the fact that the reservation will expire on a given date. At the latest three months before that date, the Member State is required to notify the depositary in accordance with the third subparagraph of paragraph 3 of its intentions. Where the Member State has notified the depositary that it upholds the reservation, the reservation is renewed for a period of five years from the first day following the date of expiry of the reservation.

If the Member States does not indicate its intentions in accordance with the procedure laid down, the reservation is considered to be automatically extended for a period of six months which starts from the first day following the five-year period. The depositary will inform the Member State of this automatic extension and of the final date when the reservation would definitively lapse. The depositary will remind the Member State in its notification of the provisions of the fourth subparagraph of paragraph 3 of the Article.

Where the Member State makes a notification to the effect that it upholds its reservation under paragraph 2 of the Article, the period of renewal of the reservation shall be considered in any case to run from the first day after the expiring date of the five-year period under which the reservation was valid.

When upholding the reservation, the Member State may amend it to ease the conditions for extradition. In any case, a Member State cannot modify the reservation in a manner which would make its conditions for extradition more strict, such as by adding new conditions.

Article 8 — Lapse of time

Under Article 10 of the European Convention on Extradition and Article 9 of the Benelux Treaty, extradition shall not be granted when the person has become immune by reason of lapse of time from prosecution or punishment, according to the law of either the requesting or the requested State.

Paragraph 1 of this Article provides that a request for extradition may not be refused on the ground that the prosecution or the punishment has, according to the law of the requested Member State, become statute-barred. This approach will facilitate extradition between Member States.

Paragraph 2 makes the application of the Article optional so as to allow the law of the requested Member State to be taken into account when the offence is one for which the Member State has jurisdiction to prosecute or to execute a sentence. Article 9 contains a provision based on similar considerations.

Article 9 — Amnesty

This Article is new in relation to the European Convention on Extradition and the Benelux Treaty but it retains the rule already set out in Article 4 of the second additional Protocol to the European Convention. It is in line with Article 62 (2) of the Convention on the application of the Schengen Agreement.

This Article provides that an amnesty declared in the requested Member State, in which that State had competence to prosecute the offence under its own criminal law, will constitute a mandatory reason for not granting extradition.

It should be noted that the fact that the amnesty impedes the extradition only when the requested Member State has jurisdiction over the offence, reflects the same kind of considerations which have been taken into account in respect of Article 8 (2).

Article 10 — Offences other than those on which extradition is based

Article 10 should be considered in relation with Article 14 of the European Convention on Extradition and the corresponding Article 13 of the Benelux Treaty. Article 10 contains new provisions whereby a Member State which has obtained an extradition can more easily exercise its criminal jurisdiction (as regards proceedings, trials and execution of penalties) in respect of offences, committed before the surrender of the person, other than those on which the extradition was requested. On the basis of Article 10, a requesting Member State can act for the aforesaid purpose without previously having to ask for and obtain the consent of the Member State which granted the extradition.

This facilitated system applies in the four cases mentioned in paragraph 1. Subparagraphs (a), (b) and (c) concern cases in which extradition could not necessarily have been requested; the case referred to in (d), on the contrary, concerns offences for which extradition could have been requested and obtained.

Within the meaning of Article 10 (1) (a), a requesting Member State may initiate or continue the prosecution of, or may try a person for an offence which is not punishable by a sanction restricting personal liberty.

Within the meaning of Article 10 (1) (b), a requesting Member State may start or continue prosecution, or try a person, even where the offence is punishable by a sanction restricting personal liberty, to the extent that the person is neither during the proceedings nor as a result of it restricted in his personal liberty. This means that if the person is sentenced to a penalty or a measure involving deprivation of liberty, this sentence cannot be executed unless the requesting Member State obtains the consent of either the person concerned as envisaged under Article 10 (1) (d) or the consent of the requested State under Article 14 of the European Convention. Article 10 (1) (b) also covers cases where the offence is punishable by imprisonment or fines. However, when the person has been sentenced to a fine, no consent is needed for the execution of the sentence.

Within the meaning of Article 10 (1) (c) a requesting Member State may enforce a final sentence involving a penalty or a measure not involving deprivation of liberty. It is stressed that this paragraph allows a State to execute not only fines, but also any measure in lieu thereof, even when that measure implies the restriction of personal liberty. Considering the formulation of this provision, a measure in lieu of a fine is in this case to be construed only as a measure which, according to domestic law, can be applied when the payment of the sum is not obtained. Therefore, this provision does not cover restrictions of liberty ordered as a consequence of a revocation of a measure of conditional liberty or any other similar measure.

In the case of Article 10 (1) (d) a requesting Member State may prosecute, or try a person extradited or execute a penalty imposed on that person without the consent of the other State being required where the said person, after having been surrendered, has expressly waived the benefit of the rule of speciality with regard to specific offences. The paragraph can also cover situations in which, on the basis of the offence, the penalty and the measures provided therefor, a request for extradition might have been possible and, if the consent of the requested State had been required, such State might have been obliged to give its consent under the second sentence of paragraph 1 (a) of Article 14 of the European Convention on Extradition.

The reason for the inclusion of Article 10 (1) (d) lies in the fact that, in extradition relations between Member States, the interests of the extradited persons are regarded as sufficiently protected by the procedure of consent. The provision is similar to the considerations underlying Article 9 of the Convention on simplified extradition procedure and it permits to take into consideration cases where the person waives the rule of speciality after he has been surrendered.

In the same manner, paragraphs 2 and 3 repeat similar provisions of that Convention and aim at establishing an appropriate procedure to express a waiver of the rule of speciality, to ensure that it is voluntarily expressed and that its effects are fully known.

Paragraph 2 specifies that the waifer of the rule of speciality must be expressed with reference to 'specific offences'. This means that a general waiver for all facts prior to surrender, or a waiver in relation to categories of facts, will not be valid. This provision, which on this point differs from Article 9 of the Convention on simplified procedure, is a further guarantee for the person to be aware of the effects that the waiver will produce.

Paragraph 4 is connected with Article 6 and provides that in the application of Article 10 (1) (a), (b) and (c), the consent of the requested Member State must be requested and obtained when the new facts amount to fiscal offences for which the requested Member State excluded extraditability by the declaration provided for in Article 6 (3).

Article 11 — Presumption of consent of the requested Member State

Within the meaning of Article 11, Member States wishing to do so may introduce, by declarations and on the basis of reciprocity, a further mechanism, different to that provided for in Article 10, to facilitate the exercise of criminal jurisdiction in the requesting Member State in relation to offences other than those for which extradition has been granted. Such mechanism consists of a derogation from the provisions concerning the rule of speciality in the 'mother' conventions.

By means of this mechanism the consent of the requested State required by Article 14 (1) (a) of the European Convention on Extradition and Article 13 (1) (a) of the Benelux Treaty is presumed to have been given. Such a presumption will permit the requesting Member State to prosecute, try, execute the sentence or any detention order of the extradited person in relation to any offence different to those for which extradition was granted and committed prior to the surrender.

It has been deemed advisable, however, to grant a Member State which made the declaration the power to suspend the 'presumption of consent' in a specific extradition request, on the basis of a decision determined by specific aspects of the case. To this end the requested Member State shall, on granting the extradition, express its will in this sense to the requesting Member State. When making the declaration, Member States that so wish may indicate in which type of cases they will suspend the 'presumption of consent'.

When the mechanism of the presumption of consent is in force, Article 10 is not applicable. As stated above, all situations covered by Article 10 are in fact fully governed by the presumption of consent. If, however, in a particular case a requested Member State has expressed its intention not to apply the presumption of consent, then Article 10 shall again be applicable. This interaction of the two Articles is provided for in the second paragraph of Article 11.

Article 12 — Re-extradition to another Member State

Article 15 of the European Convention on Extradition and Article 14 (1) of the Benelux Treaty provide that the requesting State cannot surrender a person to a third State without the consent of the State which has granted the extradition of the person to it.

On the basis of paragraph 1 of this Article, that rule shall not apply any more and the Member State which has received a request for re-extradition is not required to ask for the consent of the Member State which granted the extradition.

This new provision, as expressly stated, only concerns the re-extradition from one Member State to another Member State. Furthermore, it only applies where the State which would, under Article 15 of the European Convention on Extradition, have to give its consent is a Member State.

Each Member State can derogate from the rule provided for in paragraph 1 by a declaration made under paragraph 2. The declaration will have the effect that Article 15 of the European Convention on Extradition and Article 14 of the Benelux Treaty will continue to apply, which means that consent by that State is needed for the re-extradition.

However, it was thought, on the basis of the same considerations as those underlying Article 10 (1) (d), that the derogation from the general rule provided for in paragraph 1 of the Article would not be appropriate when the person consents to the re-extradition. It is assumed that the procedures for the expression of the consent set out in Article 10 (2) and (3) will be used in this context.

Similarly, it was thought that the derogation provided for in paragraph 1 of this Article shall not apply when Article 13 of the Convention on simplified extradition procedure provides otherwise. This occurs when the person has consented to the extradition and where the rule of speciality does not apply pursuant to a declaration made by the Member State concerned pursuant to Article 9 of that Convention. Consequently, paragraph 2 expressly provides that the declaration made pursuant to the said paragraph will not have any effect in those two cases.

Article 13 — Central authority and transmission of documents by fax

This Article is to a large extent modelled on the Agreement of 26 May 1989 between the Member States of the European Communities on the

Simplification and Modernization of Methods of Transmitting Extradition Requests (the San Sebastian Agreement, drafted within the framework of European Political Cooperation).

Paragraph 1 requires that each Member State shall designate a central authority. When, as in Germany, the constitutional system is such that certain functions that would in other States be performed by one central authority are performed by authorities which are competent at regional level, it is possible to designate more than one central authority.

The central authority will be a focal point for transmission and reception of extradition request and necessary supporting documents. In a number of Member States, that authority would normally be the Ministry of Justice.

However, paragraph 1 does not apply when the Convention, as in Article 14, expressly authorizes a different channel for transmission and reception of documents.

Paragraph 3 gives the central authority the opportunity to send extradition requests and documents by fax. Paragraph 4 covers for the conditions under which the fax transmission may be used. These conditions ensure the authenticity and confidentiality of the transmission and consist of the use of the cryptographic devices mentioned in the Article.

The requesting Member State must have full confidence that the extradition documents are authentic, namely that they have been issued by an authority which is empowered to do so under the national law and that they are not falsified. This is in particular necessary in the case of warrants of arrest or other similar documents on the basis of which the requesting State may resort to measures which are intrusive on individual rights. If the authorities of the requested Member State have any doubts concerning the authenticity of the extradition document, its central authority is entitled to require the central authority of the requesting Member State to produce the original documents or a true copy thereof in the manner prescribed in paragraph 5. The Article does not provide for a right of the person concerned to claim that the document be transmitted in the traditional way.

It is envisaged that to ensure the proper functioning of this Article it may be necessary for Member States to consult each other on the practical arrangements to apply the Article.

This Article does not exclude future arrangements between Member States outside the framework of this Convention on transmission of documents by modern means of telecommunications other than fax.

Article 14 — Supplementary information

This Article provides for a right of declaration, on the basis of reciprocity, setting up a system of direct requests for supplementary information. Requests for supplementary information may often concern matters for which the judicial or other competent authority is the only authority which is able to answer the request. Consequently the request for supplementary information may be made directly with a view to speeding up the procedure.

It is implicit from the second paragraph of the Article that the authority which has received the request for supplementary information also may answer directly to the requesting authority.

This Article specifies that the supplementary information procedure will be in accordance with Article 13 of the European Convention on Extradition or Article 12 of the Benelux Treaty. Therefore, also in cases of direct request under this Article, the authorities of the Member State requesting the supplementary information may fix a time-limit for the receipt thereof.

Article 15 — Authentication

This Article aims at simplifying the formal requirements in relation to documentation for extradition. For that purpose, it establishes the general principle under which any document or copy thereof transmitted for the purposes of extradition shall be exempted from authentication or any other formality.

This principle does not apply when the European Convention on Extradition (Article 12 (2) (a)), the Benelux Treaty (Article 11 (2) (a)) or this Convention (Article 13 (5)) require authentication or any other formality.

However, also in those cases, the Article provides for a considerable relief in the formal requirements, which have arisen in certain circumstances, in particular in relation to the special formalities which have been required by certain Member States by declarations made to the European Convention on Extradition. In accordance with this Article it will be sufficient in all circumstances that the copies of the document have been certified true copies by the judicial authorities that issued the original in accordance with the rules of the Member State where the document was issued or

by the central authority referred to in Article 13. It aims at ensuring the authenticity of the document in case this is contested, either by the requested Member State or the person concerned.

Article 16 — Transit

The Article aims at simplifying the procedures for transit to be followed pursuant to Article 21 of the European Convention on Extradition and Article 21 of the Benelux Treaty.

As follows from subparagraph (a), the information to be provided to the requested Member State is reduced. By way of derogation from Article 21 (3) of the European Convention on Extradition and Article 21 (2) of the Benelux Treaty, documents such as a copy of the warrant of arrest need not be provided any longer. The information referred to in subparagraph (a) is the same as that which has to be provided in cases where the provisional arrest of a person is requested. Some of the elements of that information are also identical to the elements of information required pursuant to Article 4 (1) of the Convention on Simplified Extradition Procedure and should be interpreted consistently under the two European Union Conventions.

In the light of Article 7, it was thought important to stress here that information on the identity of the person always includes the nationality of the person sought.

As it was considered important to provide for rapid means of communication, subparagraph (b) provides for a choice on the means of communication. The only restriction is that the request must leave a written record. Therefore, any modern means of communication fulfilling this requirement falls within the scope of this provision.

It follows from subparagraph (c) that, by way of derogation from Article 21 (4) of the European Convention on Extradition and Article 21 (3) of the Benelux Treaty, in cases of transit by air directly from the requested to the requesting Member State, no request for transit needs to be made to any Member State whose territory is overflown. However, if on such a transport an unscheduled landing occurs, the information envisaged under subparagraph (a) shall be provided for as quickly as possible to the transit Member State. Subparagraph (b) may be used in such cases.

Subparagraph (d) deals with Article 21 (1), (2), (5) and (6) of the European Convention on Extradition. It provides for the possibility of refusing the transit in certain cases specified therein. Paragraph 1 of that Article, concerning offences which are political or purely military, as well as paragraph 6, relating to discriminatory prosecution, will continue to apply in so far as Articles 3 or 5 of this Convention do not restrict their application. In the same manner, paragraph 2 deals with nationals and will continue to apply, taking into account the restrictions of Article 7 of this Convention. Paragraph 5 has the same relationship to Article 6 of this Convention. Furthermore, paragraph 5 cover other cases of refusal of the transit that remain possible by virtue of a declaration, made by a Member State pursuant to that paragraph, on the basis of which the granting of the transit is submitted to some or all of the conditions on which the same State grants extradition.

Article 17 — Reservations

The Article provides that no reservations may be entered in respect of the Convention other than those for which it make express provision. Such reservations are provided for within the meaning of Article 3 (3), Article 5 (2), Article 6 (3), Article 7 (2) and Article 12 (2).

The abovementioned reservations shall be entered, by a declaration, when giving the notification referred to in Article 18 (2). They cannot be made at any other time.

Article 18 — Entry into force

This Article governs the Convention's entry into force, in accordance with the rules established in this matter by the Council of the European Union. The Convention comes into force 90 days after the last instrument of adoption has been deposited by any State which was a Member of the European Union at the moment of the adoption by the Council of the Act establishing the Convention, i.e. 15 Member States. The Council adopted the Act on 27 September 1996.

However, as in the judicial cooperation agreements concluded previously between the Member States, to enable the Convention to be implemented as soon as possible between the Member States most concerned, paragraph 3 allows for the possibility whereby each Member State, at the time of its adoption or at any time subsequently, can issue a declaration making the Convention applicable in advance *vis-à-vis* any other Member States that have made the same declaration. The declaration will take effect 90 days after being deposited.

Article 19 — Accession of new Member States

This Article provides that the Convention shall be open for accession by any State which becomes a Member of the European Union, and lays down the arrangements for such accession. A State which is not a Member State may not accede to the Convention.

If the Convention is already in force when a new Member State accedes, it will come into force with respect to that Member State 90 days after the deposit of its instrument of accession. But if the Convention is still not in force in 90 days after that State's accession, it will come into force with respect to that State at the time of entry into force specified in Article 18 (3). In that case the acceding State will also be able to make a declaration of advance application provided for in Article 18 (4).

It may be noted that, as a result of Article 18 (3), if a State becomes a member of the European Union before entry into force of the Convention and does not accede to the Convention, the Convention will nevertheless come into force when all the States that were Members at the time of signing have deposited their instruments of adoption.

In the light of the additional nature of the present Convention as provided for in Article 1 of the Convention, it is a necessary precondition for accession to have ratified the 1957 European Convention on Extradition of the Council of Europe.

Article 20 — Depositary

This Article provides that the Secretary-General of the Council is the depositary of the Convention. The Secretary-General shall inform the Member States as quickly as possible of any notification received from the Member States which concerns the Convention. These notifications will be published in the *Official Journal of the European Communities*, 'C' series, as well as any information on the progress of adoptions, accessions, declarations and reservations.

COUNCIL CONCLUSIONS

of 27 May 1997

concerning the practical implementation of the Dublin Convention

(97/C 191/04)

THE COUNCIL OF THE EUROPEAN UNION,

ADOPTS the following addition to the guidelines for the implementation of the Dublin Convention which were adopted in Lisbon on 11 and 12 June 1992 by the Ministers concerned with immigration:

'**Time limit for replying to a request that an applicant be taken in charge**

The Member State which is requested to take charge of an applicant should make every effort to reply to the request within a period not exceeding one month from the date on which the request was received.

In cases where particular difficulties arise, the requested Member State may also, before the time limit of one month is reached, produce a temporary reply indicating the period within which it will be possible to give a definitive reply. The latter period should be as short as possible and may in no circumstances exceed the period of three months from the date on which the request was received as indicated in Article 11 (4) of the Dublin Convention.

If a negative reply is given within the time limit of one month, the requesting Member State still has the option, within a period of one month from the date on which it receives the negative reply, to contest that reply if, after the date on which the request was acknowledged, new and important facts have been brought to its attention which show that responsibility lies with the requested Member State. The requested Member State must then respond as quickly as possible.

The effects of this decision in practice must be assessed after one year by the Article 18 Committee. At that time it will be considered whether a period of one month can constitute a maximum time limit.

Urgent procedure

When a request for asylum is submitted to a Member State following refusal to allow entry or residence, arrest as a result of illegal residence or notification or execution of a removal measure, that Member State should forthwith notify this to the Member State deemed to have responsibility; such notification should give the reasons of fact and law why a swift reply is necessary and the deadline within which a reply is requested. The Member State should endeavour to provide a reply within the specified periods. If this is not possible, it should inform the requesting Member State thereof as quickly as possible.'

ALSO ADOPTS the following addition to the conclusions relating to the transfer of asylum applicants pursuant to the Dublin Convention, as adopted in London on 30 November and 1 December 1992 by the Ministers concerned with immigration:

'Where the transfer of the asylum applicant has to be postponed due to special circumstances such as sickness, pregnancy, criminal detention, etc., and it is therefore not possible to carry out the transfer within the normal period of one month, the Member States concerned should duly consult and agree on a case-by-case basis on the time limit within which the transfer must take place.

Where the asylum applicant avoids implementation of the transfer so that it cannot be carried out, it is irrelevant with regard to responsibility whether the applicant disappeared before or after the formal acceptance of responsibility. If the asylum applicant is subsequently found, the Member States concerned should duly consult and agree on a case-by-case basis on the time limit within which the transfer must take place.

The Member State concerned must inform each other as quickly as possible if they learn that one of the above situations has arisen. In both the above cases, the Member State responsible for examining the asylum application under the Dublin Convention will remain responsible for taking charge of or taking back the applicant without prejudice to Article 10 (2), (3) and (4) of the Convention.'

ALSO ADOPTS the following addition to the text on means of proof in the framework of the Dublin Convention, as adopted by the Council on 20 June 1994 (Official Journal No C 274, 19. 9. 1996, pp. 35 to 41):

'Without prejudice to the provisions referred to in Official Journal No C 274, 19. 9. 1996, pp. 35 to 41, concerning means of proof, responsibility for dealing with an application for asylum may in individual cases be accepted on the basis of a consistent, sufficiently detailed and verifiable declaration by the asylum applicant.';

Having regard to the exchange of information referred to in Article 14 (1) and 15 (1) of the Dublin Convention and the need to have access in a structural manner to statistical data concerning the practical implementation of the Dublin Convention,

Noting that Article 15 (1) of the Dublin Convention contains no deadline within which Member States must deal with other Member States' requests for information,

AGREES to change to three-monthly exchanges of statistical information concerning the practical implementation of the Dublin Convention using the tables given in the annexes;

ALSO AGREES that the Member State to which a request within the meaning of Article 15 is addressed should make every effort to reply to the request if possible immediately and in any event within one month.

Activity report on the Centre for Information, Discussion and Exchange on Asylum (Cirea) for 1994 and 1995

(Text approved by the Council on 26 May 1997)

(97/C 191/05)

The ministerial decision establishing the Centre for Information, Discussion and Exchange on Asylum (Cirea) stipulates that Cirea is to draw up activity reports for the Council. Cirea has already submitted a report on the first and second halves of 1993. The present report describes Cirea's activities in 1994 and 1995.

I. GENERAL

(a) Number of meetings

Cirea held four meetings in 1994 [1] (21 January, 23 September, 19 October and 8 December) and eight in 1995 (13 February, 5 April, 4 May, 1 June, 7 September, 6 October, 8 November and 12 December).

From the second half of 1994 in particular Cirea increased the number of meetings and gave greater depth to its work through more diversified and more detailed discussion on asylum.

Generally, national experts responsible for examining asylum applications attend Cirea meetings. However, the heads of bodies responsible in the Member States for granting refugee status met in Cirea for the first time on 1 June 1995, under the French Presidency.

(b) Participation of the UNHCR in meetings

Further to initiatives to that end, first within Cirea and subsequently confirmed by Coreper (Part 2), the Office of the United Nations High Commissioner for Refugees was invited to attend Cirea meetings as from the first half of 1995. The UNHCR was not given observer status, but was called upon to cooperate in Cirea's proceedings on specific issues on its agenda.

Its presence was a useful contribution to discussions in Cirea. The UNHCR also submitted written contributions concerning source third countries of asylum-seekers. The information in question was established by the UNHCR's Centre for Documentation on Refugees on the basis of public data, the source of which is indicated in the document.

[1] Of which three were in the second half.

(c) Preparation of the new Member States for accession

Cirea continued the informal talks, begun in 1993 with the new Member States — at the time candidates for accession to the European Union — in order to learn more about the situation as regards asylum policy in those countries. Cirea held meetings with Austrian and Swedish representatives. The issues discussed were domestic legislation on asylum, the institutional structure laid down for decision-making on asylum, the number and provenance of asylum-seekers and certain aspects relating to displaced persons from former Yugoslavia.

Cirea did not hold a meeting with Finland, but received a document from it containing a detailed description of several aspects of importance as regards asylum (processing of applications for asylum, reasons for decisions, situation regarding appeals and decision-making procedure in the field of asylum).

II. ADOPTION OF ACTS TO ESTABLISH CIREA

The following decisions relating to Cirea were taken by the Council in 1994:

— the procedure for preparing reports in the framework of the common assessment of the situation in third countries;

— guidelines on the content of joint reports on third States [2];

— the rules on the dissemination and confidentiality of joint reports on the situation in certain third countries [3].

III. CIREA'S WORK IN 1994 AND 1995

(a) Examination of the situation of source third countries of asylum-seekers

In 1994 and 1995 Cirea carried out a detailed examination of the situation in the following source third countries or regions of asylum-seekers in a number of Member States:

[2] OJ No C 274, 19. 9. 1996, p. 52.
[3] OJ No C 274, 19. 9. 1996, p. 43.

— Albania,

— Bhutan,

— Bhutan nationals of Nepalese origin,

— Caucasus,

— Bulgaria,

— Myanmar,

— Iraq,

— independent Republics (Georgia, Azerbaijan) and Republics of the Russian Federation (North Ossetia, Ingushetia, Chechnya),

— Romania,

— Sri Lanka,

— Islamic fundamentalist (Iran, Egypt, Tunisia, Algeria),

— Turkey,

— Zaïre.

Cirea also discussed some aspects concerning other third countries, albeit in less detail than those referred to above, namely:

— Cuba,

— Burundi,

— Mauritania,

— Rwanda,

— Sierra Leone,

— Albanians from Kosovo.

Those discussions were generally held in the light of Member States' replies to a questionnaire on the country or region concerned. The following in particular were taken into account:

— statistics (asylum applications and rates of recognition),

— classification of asylum applications (profile of the applicant, such as ethnic origin or religion),

— reasons given,

— itineraries followed since leaving the country of origin,

— evaluation of the application having regard to the Geneva Convention (method of analysing asylum applications; the concept of internal asylum; processing of specific cases),

— the current situation in the country of origin,

— the practice of asylum-seekers being assessed by the Member State concerned, and

— the measures taken in the event of refugee status not being recognized.

In some cases Member States were able to examine the situation in the light of joint reports prepared initially by the Heads of Mission of the Member States in the third State in question and finally approved by the CFSP bodies. Those reports made it possible to take into account an overall evaluation in situ, insofar as that had a bearing on asylum [1].

The Office of the High Commissioner for Refugees systematically submitted an information document on the situation in those third countries, putting forward the salient points for Cirea. Those documents were prepared on the basis of public information available on the matter.

Cirea also benefited from the input of on-the-spot mission reports from one or other Member State. Those reports took into account the major principles governing the organization of the country and the impact of the situation on people living in it (see III(b)).

Lastly, Cirea received reports prepared by non-governmental organizations sent to it on the initiative of those organizations.

(b) **Joint missions to the countries of origin of asylum-seekers**

In 1995 Cirea looked at the possibility of joint missions, with the participation of several Member States, to the countries of origin of asylum-seekers. Such missions should also make possible a clearer identification of the situation obtaining on the spot, taking into account certain technical or general aspects which were difficult to pinpoint from a distance and knowledge of which would provide a better evaluation of asylum applications. Cirea and the Steering Group did not have the opportunity to adopt a definitive position on the matter.

As an alternative, it was agreed that each Member State would undertake to inform the other Member States of the outcome of missions it had carried out in any third country insofar as they related to asylum. Furthermore, before the beginning of each mission, the Member State concerned could invite other Member States to join the mission, or collate the questions or points of view put forward in Cirea by the other Member States, so that they could be taken into account during the mission. It was accordingly agreed to enter an item on the agenda for each Cirea meeting concerning missions carried out

[1] Joint reports on the following were prepared in 1994 and 1995: Zaïre, Albania, Bulgaria, Turkey, Sri Lanka, China, Angola and Nigeria.

or to be carried out by the Member States in the countries of origin of asylum-seekers.

In 1995 Cirea received reports on missions to Sri Lanka, Zaïre and Ethiopia.

(c) **Exchange of information on asylum**

At the beginning of each meeting the members of Cirea exchanged oral and written information on internal aspects or developments. That exercise focused, *inter alia*, on the following aspects:

— legislative or administrative changes regarding asylum made or under examination in the Member States. It should be noted that a fairly large number of Member States have amended their domestic legislation on asylum in several areas (notably NL/EL/E/DK/P). Those amendments, further to those initiated in 1993 by several Member States, have on occasion involved considerable changes to the rules on asylum. In other cases the changes made relate to specific questions such as aid for voluntary repatriation, residence permits to be issued to asylum-seekers or the reception arrangements for aliens at reception centres,

— the case-law applicable in some Member States,

— the regions or countries of origin which have, over the months prior to each meeting, given rise to the largest number of asylum-seekers in each Member State,

— national procedures applicable to asylum-seekers arriving at the frontier,

— any readmission agreements concluded by each Member State with third States,

— measures taken in respect of visas, where that can affect asylum,

— exchange of views on the repatriation of rejected asylum-seekers,

— exchange of views on the legislation applicable in the Member States to the possibility of granting residence permits to asylum-seekers who do not satisfy the conditions laid down in the 1951 Convention,

— applications for asylum in Member States by unaccompanied minors: frequency and proposed solutions,

— legal aid for asylum-seekers,

— education for the children of asylum-seekers.

(d) **Representations to be made to the authorities of third States**

In line with the initiatives begun in 1993, Cirea collated the necessary information to enable the competent authorities to make representations to the Chinese authorities as a result of the increase in the number of asylum-seekers of Chinese origin who had been rejected and remained illegally in the territory of one or other Member State. That information had been forwarded to the CFSP with a view to specific representations in situ.

Cirea carried out a comparable exercise with regard to Vietnamese asylum-seekers, with a view to preparing representations to the Vietnamese authorities.

(e) **Examination of the Member States' different rates of recognition of refugee status**

Cirea examined the Member States' different rates of recognition of refugee status. Member States were able to examine in detail the grounds justifying, in certain instances, the different rates of recognition from one Member State to another in respect of asylum-seekers from the same third country or region of origin. This exercise was also carried out in the context of examining the situation in source third countries of asylum-seekers.

(f) **Statistics**

Cirea prepared a fairly large number of statistics on asylum-seekers who had lodged an application in one of the Member States and on the rate of recognition accepted by them. Those data were for 1994 and 1995. They were prepared by geographical region (whole world, Europe, Asia, Africa, America and Oceania) in respect of those source third countries of the largest number seeking asylum in the European Union.

Those statistics are a way of informing Member States rapidly on asylum trends, in particular the situation with regard to the number of applications for asylum submitted in the Member States. It is not their objective to provide final statistical data for each Member State.

(g) **More detailed examination of matters relating to the common position on the harmonized application of the definition of 'refugee' within the meaning of Article 1 of the Geneva Convention**

In 1994 and 1995 the Asylum Working Party examined a draft common position on the harmonized application of 'refugee' within

the meaning of Article 1 of the Geneva Convention [1].

In order to provide greater support for the proceedings of the Asylum Working Party, Cirea examined several situations:

— the processing of applications for asylum lodged by persons originating in a zone of civil war or of violent or widespread internal conflict. In particular, the question was discussed whether fear of persecution would be justified, in such instances, by one of the grounds set out in Article 1A of the Geneva Convention. For that purpose Cirea took into account the situation of certain third countries undergoing internal upheaval (Angola, Somalia and Liberia),

— the application of Article 1C (5) of the Geneva Convention to Romanians with refugee status,

— Member States' practice as regards the application of Article 1F of the Geneva Convention and the list of international instruments likely to be covered by that Article.

(h) **Guidelines for the dissemination and confidentiality of joint reports** [2]

During 1994 the Council laid down guidelines for the dissemination and confidentiality of joint reports on the situation in certain third countries. In particular, it was agreed that:

— national authorities responsible for asylum matters and questions relating to aliens could use those reports amongst the information at their disposal,

— depending on national procedures, those reports might be brought to the knowledge of the parties involved in appeal proceedings against a decision by the authorities responsible for matters relating to asylum or aliens.

(i) **Preparatory specialist meetings of Cirea on countries of origin**

Cirea began discussing the desirability of examining the situation of certain third States of particular importance only to some Member States. That initiative derived from the importance which the Member States attach to such an evaluation in Cirea. Such meetings would be composed by those Member States which wanted them and felt a pressing need for them to be held. Cirea had not yet completed its discussions on these matters at the end of 1995.

(j) **Compilation on asylum**

Cirea updated the compilation of texts on European practice with respect to asylum. It contains the most important acts and other texts on asylum adopted by Member States before and since entry into force of the Treaty on European Union.

(k) **Implementation of cooperation between the CDR/UNHCR and Cirea**

The ministerial decision establishing Cirea stipulates that, in the framework of the exchange of information to be established between the Member States with regard to asylum, account should be taken of the data stored by the Office of the United Nations High Commissioner for Refugees. It was further provided that Cirea should suggest that any cooperation deemed worthwhile in the matter should be introduced.

Against this background, Cirea discussed the desirability of setting up a system giving Member States access to the data stored by the Centre for Documentation on Refugees (CDR) of the UNHCR by means of a database to be installed in the General Secretariat of the Council.

During the discussions on this point the idea was put forward of considering the possibility of establishing a system of information exchange on an electronic basis. Each Member State would introduce into the electronic system aspects on which it wanted a reply from the other Member States. That message would automatically be disseminated to all members of Cirea simultaneously. Each Member State would endeavour to give the desired reply within the time limit set by the requesting Member State. Cirea was unable to adopt a final position on this question by the end of 1995.

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[1] This instrument has since been adopted by the Council (OJ No L 63, 13. 3. 1996, p. 2).

[2] OJ No C 274, 19. 9. 1996, p. 43.

Activity report on the Centre for Information, Discussion and Exchange on Asylum (Cirea) for 1996

(Text approved by the Council on 26 May 1997)

(97/C 191/06)

During the course of 1996 the Centre for Information, Discussion and Exchange on Asylum (Cirea) met eight times on:

— 16 January,

— 26 February,

— 3 May,

— 2 and 3 July,

— 3 September,

— 30 September,

— 28 October,

— 5 December.

Two types of work were put in hand within Cirea: on the one hand, the pursuit of its mandate in the matter of exchange of information, and on the other hand, reflection on Cirea's working methods.

In addition, in the context of the Transatlantic Dialogue, a meeting between experts from Cirea and the United States of America was set up to exchange information on asylum.

I. EXCHANGE OF INFORMATION

1. Legislation, regulations, jurisprudence of the Member States in asylum matters

Belgium, Spain, Ireland, Luxembourg and the United Kingdom informed Cirea of modifications to their legislation which came into force during 1996, in relation to which commentaries or copies of the new texts have been circulated:

Belgium:	Laws of 10 July 1996 and 15 July 1996 amending the Law of 15 December 1980 on access to the territory, residence, establishment and expulsion of aliens, published in the *Moniteur belge* of 5 October 1996,
Spain:	Royal decree 155/96 of 2 February approving the executive regulation of Organic Law 7/1985,
Ireland:	Irish Refugee Act 1966 (26 June 1996),
Luxembourg:	Law of 3 April 1996 regarding the creation of a procedure for the examination of an asylum application along with Grand Ducal implementing regulations of 22 April 1996,
United Kingdom:	Asylum and Immigration Act 1996 (24 July 1996).

Revisions are in hand in Denmark, Greece, the Netherlands and Sweden. Sweden sent two notes to Cirea — a summary of a report to the Swedish Government by the Parliamentary Refugee Policy Commission and a summary of Government Bill 1996/97:25 relating to Swedish migration policy in a global perspective.

In addition, at the initiative of the Slovak Mission to the European Union, Cirea received a copy of the Refugee Act adopted on 14 November 1995 by the Slovak Parliament.

Finally, Germany sent Cirea an analysis note on the findings of the Federal Constitutional Court of 14 May 1996 concerning the new asylum regulations, in which the Constitutional Court determined that the new provisions of asylum law relating to safe third countries, to safe countries of origin and to the procedure applicable at airports were compatible with the German Constitution.

2. Statistics

The General Secretariat of the Council drew up statistics relating to asylum applications for the second half of 1995, the first quarter of 1996 and the first half of 1996. These contain the data provided by Member States relating to applications and rates of recognition by geographical region and for the top 50 source third countries of asylum applications within the European Union.

Member States also received at each Cirea meeting the latest information available (provisional information) provided by each Member State in accordance with the model set in 1993.

3. **Situation in countries of origin of asylum-seekers**

(a) *Examination within Cirea*

Cirea examined the situation of the countries of former Yugoslavia and, in this context, that of Kosovo, in particular, along with Iraq and Somalia. A questionnaire has been sent to Member States with a view to looking at the situation in China in the near future.

For each of the countries, the evaluation has concentrated on:

— the characteristics of applications made (profile of applicant, reasons invoked, means of leaving country of origin, itinerary followed, type and authenticity of documents presented),

— appraisal of applications in accordance with the Geneva Convention (general situation of country — including political situation and respect for human rights — and the practice followed in Member States as regards recognition of applications) and the basic procedure regarding their investigation,

— whether the exclusion or cessation clauses have been applied,

— for refusals, whether applicants can stay in a Member State's territory on the basis of some other reason, or be removed (repatriation to regions of the country of origin considered safe, expulsion to third countries, possible practical difficulties linked to expulsion).

Cirea invited the UNHCR to participate in the evaluation of the situation in these countries by providing its own analysis during the course of oral presentations by one of its experts on the countries examined. The UNHCR complemented these oral presentations with written reports to Cirea setting out the background to applications originating in these countries.

(b) *CFSP joint reports*

At the request of Cirea, the CFSP authorities provided in March 1996 an update of the joint report on Nigeria which had been prepared in February 1995, and in September 1996 a report on the situation of Afghan refugees in Pakistan.

Cirea also sought joint reports on Algeria and on Iraq, but it has not been possible to date to provide these reports having regard to the political situation prevailing at present in those countries.

(c) *Missions undertaken by Member States in countries of origin*

Cirea was informed of the results of each mission to a third country carried out by a Member State. In this way, Cirea received reports on the situation in Zaire, the Republic of Guinea, Iran, Armenia and North-Eastern and North-Western Somalia.

In 1995 the possibility of carrying out missions involving several Member States had been considered. This occurred in 1996, when one Member State announced its intention of carrying out a mission to Pakistan and was joined by three other Member States. This experience of a 'joint' mission was regarded by each of the participants as extremely positive.

Cirea has also been informed of plans for missions to Bangladesh, to Sri Lanka, Bangladesh and Pakistan, and to Azerbaijan.

4. **Other matters dealt with**

Various one-off questions, arising either out of the international situation or at the request of individual Member States, have also been dealt with in Cirea, such as:

— the consequences of the signing of the Dayton/Paris accord for the recognition of refugee status for asylum applicants from Bosnia and Herzegovina,

— asylum seekers of Pakistani origin coming from Bangladesh (Beharis),

— the residence situation for stateless persons,

— conditions for expulsion to Côte d'Ivoire,

— the return of citizens of Zaïre, of southern Sudan, of southern Lebanon, where the asylum application has been rejected.

Cirea decided to prepare a list of contact points of persons in Member States who deal with applications for asylum which is to be kept regularly up to date.

The General Secretariat of the Council has circulated a March 1996 update of the compilation of texts on European practice with respect to asylum.

II. REVIEW OF CIREA'S WORKING METHODS

At the start of the Italian Presidency, the heads of organizations responsible within Member States for the recognition of refugee status met for the second time (the first meeting had taken place in June 1995 at the initiative of the French Presidency). In particular, the heads of these organizations, at the initiative of France, asked that an evaluation of the activities of Cirea be undertaken. At its meeting on 8 and 9 July 1996 Steering Group I decided that a review of Cirea's working methods and practices should be carried out.

This evaluation was put in hand under the Irish Presidency, during which it undertook a detailed examination of Cirea's working methods with a view to more effective utilization of the resources of national delegations, of the Commission and of the Council Secretariat. The basis for Cirea's work was a note from the Irish Presidency. This document contains a series of conclusions which are at present under examination by the K.4 Committee.

Other subjects for specific examination are, on the one hand, the creation of a computerized database and, on the other hand, improvement in the collection and organization of asylum statistics. Consideration of these two matters has started.

(a) **Database**

Cirea agreed not to follow up at this stage on the project to obtain information from UNHCR's database through Cirea; as this information can be obtained directly by each Member State.

At the meeting held within the framewoirk of Cirea on 26 February 1996, the heads of bodies responsible in Member States for granting refugee status considered that the setting-up of a Cirea database might be useful for Member States, provided that information relevant to the use Member States wished to make of it were included. The General Secretariat of the Council was asked to produce a note on the technical feasibility of such a database and its cost, bearing in mind the need for rapid access to information and linguistic problems.

Delegations received a note from the Information Technology Division of the General Secretariat of the Council on the technical aspects of such a database, which has not yet been discussed within Cirea.

The question of which data to include in such a database is still under discussion.

(b) **Statistics**

Cirea, with a view to improving the existing statistical system, invited the representative of the Commission's statistical service (Statistical Office of the European Communities – Eurostat) to bring its experience into this discussion. The European Commission departments circulated to Cirea a working document setting out operations in this area. It was decided that Cirea would concentrate on setting out in detail its requirements with a view to possible assistance from the Commission's statistical service in gathering, presenting and analysing the statistical data on asylum circulated within the Centre.

III. MEETING BETWEEN EXPERTS FROM CIREA AND THE UNITED STATES OF AMERICA

In 1996, within the framework of the Transatlantic Dialogue, the decision was taken to establish links between experts on asylum from the United States of America and the European Union, on the basis laid down by Coreper of regular meetings to be held, for practical reasons, back-to-back with Cirea meetings.

The first meeting between experts from both Cirea and the United States was held at the end of 1996, just after the Cirea meeting of 5 December, and, being the first meeting, was chiefly devoted to an exchange of information on Cirea and US activities with respect to asylum.