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REPORT

to : COUNCIL (Justice and Home Affairs)
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Subject: Extradition

At its meeting on 3 and 4 March 1994 the K.4 Committee drew up the attached draft report on extradition which it proposes should be submitted to the Council meeting (JHA) on 23 March 1994.
1. As instructed, the appropriate group is currently examining aspects of the statement on extradition adopted by the Council at its meeting on 29 and 30 November 1993. It is doing so in the light of the interim report approved by the Council at the same meeting.

The issues under discussion are listed in the Annex.

The group has examined a number of issues on which it has established guidelines that may form the basis for a future agreement on improving co-operation between Member States in the matter of extradition.

2. There is now very broad agreement among most of the Member States on the following points:
   (a) one-year threshold for the requesting State and six-month threshold for the requested State;
   (b) extradition for fiscal offences relating to excise, value added tax and customs duties;
   (c) measures relating to life sentences. This would involve extradition for offences punishable by life imprisonment under the law of the requesting State, where such a sentence is not provided for under the law of the requested State, provided that the requesting State guarantees to encourage, in accordance with its law and practice regarding the enforcement of penalties, such mitigating measures as the person to be extradited might have available. This measure is modelled on that on the same subject in the context of the Convention applying the Schengen Agreement on the occasion of Portugal’s accession.
(d) renunciation of the speciality rule with the consent of the person concerned;

(e) reference to the Convention on Human Rights and the 1951 Geneva Convention on Refugees, whereby the Member States reaffirm their commitment to those Conventions.

Discussion on these issues will continue in the hope that further progress can be made, taking account of the alternative proposals contained in the Annex.

3. There is still substantial disagreement on other issues. The majority of delegations believes that two of these, which are of a political nature, should be the subject of a policy debate in the Council:

(a) exclusion of the political nature of the offence as a reason for refusing extradition (Convention on Terrorism or in general) (point 1.2 of the Annex);

(b) extradition of nationals (point 1.5 of the Annex).

The Council is therefore invited to hold a policy debate to explore possible solutions in these two areas.
EXTRADITION CONDITIONS

List of measures discussed by the Group

1.1. Extraditable offences

1.1.1. First measure: reduction of the imprisonment threshold required

1. reduction to one year in all Member States of the threshold of imprisonment required for extradition;

   this measure is in line with Article 2 of the European Convention on Extradition of 13 December 1957 and with the solution implicitly adopted in the Convention applying the Schengen Agreement of 19 June 1990 (Articles 59 to 61);

2. possibility of adopting a lower threshold;

   = a threshold of one year for the requesting State and six months for the requested State;
   = a threshold of 6 months for example, as in Benelux relations (Article 2.1 of the Benelux Treaty on extradition and mutual judicial assistance in criminal matters of 27 June 1962);
   = this measure should be accompanied by a speeding-up of procedures;

1.1.2. Second measure: removal of the requirement for an imprisonment threshold for the requested State

1. maintaining the requirement that the offence should carry a custodial penalty in the requested State;

   removal of the requirement for an imprisonment threshold for the requested State provided that the offence carries a custodial sentence in that State and could result in extradition under the law of the requesting State;
2. with removal of the requirement for a custodial sentence in the requested State;

   = possibility of extradition for criminal offences which did not carry custodial sentences in the requested State (punishable by fines instead) but which were extraditable under the law of the requesting State;

   = possibility of extradition for offences which were administrative in nature in the requested State but which were extraditable under the law of the requesting State;

1.1.3. Other measures for relaxation of the dual-criminality requirement

1. consideration of dual criminality only as an optional ground for refusal at the discretion of the requested State and no longer as a condition for extradition;

2. limitation of the dual-criminality option to cases where the absence of dual criminality in the strict sense would constitute a breach of public order in the requested State;

3. abolition of the reference to dual criminality for a number of specific offences including that of criminal association in particular;

1.1.4. General abolition of the dual-criminality requirement

1.1.5. Measure relating to accessory extradition

abolition of the dual-criminality requirement with regard to accessory extradition;
1.2. **Political offences**

1.2.1. Exclusion of the political nature of the offence as grounds for refusal of extradition in requests made between Member States for one of the offences defined in Article 1 or covered by Article 2 of the European Convention on the Suppression of Terrorism of 27 January 1977

- minimum solution: withdrawal of the reservations tabled at the time of ratification of the European Convention on the Suppression of Terrorism under Article 13 of that Convention;

1.2.2. General abolition of the exception to extradition for political offences.

1.3. **Fiscal offences**

Treatment of fiscal offences in the same way as ordinary criminal law offences for extradition purposes:

1.3.1. at least in respect of excise, value added tax and customs duties (in line with the solution adopted in the Schengen Convention (Article 63));

1.3.2. also in respect of offences relating to direct taxation (in line with Article 2 of the second Additional Protocol to the European Convention on Extradition).

1.4. **Period of limitation**

1.4.1 assessment of the period of limitation of the public prosecution procedure or of the penalty by exclusive reference to the law of the requesting State;

1.4.2 minimum measure: limitation of the measure to the rules relating to interruption of the period of limitation (in line with the solution adopted in the Convention applying the Schengen Agreement (Article 62.1));
1.4.3. intermediate solutions:

1. limitation of the application of this reason for refusal to cases where the requested State had jurisdiction in respect of the offence under its own legislation;

2. exclusion of such grounds for refusal with regard to certain specific offences relating to terrorism and violent and highly organized crime.

1.5. **Extradition of nationals**

1.5.1. abolition of the exemption of nationals from extradition:

1. abolition pure and simple;

2. abolition subject to certain conditions: reciprocity, possibility of subsequent transfer to the requested State after conviction;

1.5.2. alternatively, introduction of a system whereby the person concerned would be temporarily handed over for prosecution on the basis of the rules of mutual judicial assistance in cases of serious crime (criminal association; possibly certain specific offences relating to terrorism, and violent and highly organized crime).

1.6. **Life sentence**

Extradition for offences punishable by life imprisonment under the law of the requesting State, where such a sentence is not provided for under the law of the requested State, provided that the requesting State guarantees to encourage, in accordance with its law and practice regarding the enforcement of penalties, such mitigating measures as the person to be extradited might have available:

measure modelled on that on the same subject in the context of the Convention applying the Schengen Agreement on the occasion of Portugal's accession.
1.7. **Speciality rule**

1.7.1. renunciation of the speciality rule:

1. general renunciation
2. in cases where the persons concerned agreed to this renunciation;

1.7.2. application of this measure in the event of re-extradition: re-extradition should not be subject to the agreement of the State granting the original extradition.