The attached report from the Permanent Representatives Committee is addressed to the Council (Justice and Home Affairs) for approval and forwarding to the General Affairs Council.
I. INTRODUCTION

At the Franco-German summit held in Mulhouse on 31 May 1994, France and Germany agreed on a joint initiative to combat racism and xenophobia in the European Union.

That initiative, which followed on from the conclusions of the Council of Ministers for Justice and Home Affairs on 29 and 30 November 1993 on racism and xenophobia, was approved at the meeting of Heads of State and Government in Corfu on 24 and 25 June 1994.

Two lines of action were taken following the Corfu European Council:

- one, the Consultative Commission was set up;

- two, the subject was placed before the Justice and Home Affairs Council.

At its meeting on 30 November and 1 December 1994, the Council (JHA) approved an interim report containing, among other things, a description of the progress of the work being done under Steering Groups II (Police and Customs Cooperation) and III (Judicial Cooperation) (11768/94 JAI 78).

That document was submitted to the Essen European Council which concluded that it constituted a sound basis for further progress towards a global strategy of the Union against racism and xenophobia.

Discussions continued within Steering Groups II and III and their working parties and were supplemented by a discussion in Steering Group I on the links between illegal immigration and racism and xenophobia.

As a result of this work the K.4 Committee herewith submits the following final report:
II. THOUGHTS OF THE THREE STEERING GROUPS

A. Lack of control of migratory flows: a source of racism and xenophobia?

The conditions for implementing an effective strategy to forestall the appearance or rise of racist or xenophobic phenomena can be improved by adequate control of illegal migratory flows. The countries of the European Union must be mindful of their obligations both to their own citizens and to third country nationals residing lawfully within their territory. Current efforts against racism and xenophobia could be seriously undermined by an influx of illegal immigrants from third countries. Daily life provides ample illustration of the problems which illegal immigration and its frequent corollary, illegal labour, can generate.

It follows that successful efforts to combat illegal immigration, even if not originally undertaken with the fight against racism and xenophobia primarily in mind, can in practice contribute significantly to this fight.

Efforts undertaken, particularly at European Union level in connection with the third pillar, to combat illegal immigration, facilitators and illegal labour can therefore complement efforts to combat racism and xenophobia, by improving the conditions which help to integrate foreigners whose presence is legal. It is also essential that public opinion be properly informed about this link. False correlations drawn between immigration, delinquency and insecurity can themselves be the catalyst for racism, particularly where public services, social security systems and public housing are under strain.
Failure to control immigration flows, or public perception of such failure, can therefore exacerbate racism and xenophobia. Conversely, the actual efforts of EU Member States to integrate foreigners legally admitted to their territory contribute directly to the fight against racism and xenophobia. In this connection, the policies of the Union, and their harmonization within the institutions set up by the Treaty, should contrive to observe the humanist demands of European tradition. Our duties clearly derive from our recognition of human rights, included moreover in the Treaty.

B. The contribution of police and customs cooperation to combating racism and xenophobia

In the light of the proceedings of the Terrorism and Police Cooperation Working Parties, the following conclusions were reached. These conclusions amount essentially to recommendations for the police departments in the Member States with the aim of transposing the specific measures proposed to national level.
1. **Training and continuing training**

Training and continuing training within the police force could contribute significantly to the police becoming more aware of the problems of foreigners and minorities in their country and recognizing that the phenomenon of xenophobia/racism must be vigorously combated.

Thus, by way of specific measures under way within the European Union, a schedule of Franco-German training courses and regional training schemes for police officers in border areas has been drawn up. These courses and schemes will lay stress on combating racism and xenophobia.

Other examples will be proposed: through the process of sharing professional experience, these should enable training to be geared to the immediacy of the problem and to take into account the historical and cultural dimensions of the phenomenon.

Personal encounters and events should supplement the programme of training and continuing training.

2. **Statistical survey**

To ensure that the nature and extent of the racism/xenophobia phenomenon, both as currently observed and in any future development, are immediately recognizable and the appropriate conclusions drawn, the members of the Terrorism Working Party agreed that a statistical survey should be carried out according to the following pattern:
<table>
<thead>
<tr>
<th>Xenophobic/racist/ anti-semitic offences</th>
<th>Victims (1)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Murders</td>
<td></td>
</tr>
<tr>
<td>– committed</td>
<td></td>
</tr>
<tr>
<td>– attempted</td>
<td></td>
</tr>
<tr>
<td>Attacks involving explosives/arson</td>
<td></td>
</tr>
<tr>
<td>(including attempted attacks)</td>
<td></td>
</tr>
<tr>
<td>GBH</td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td></td>
</tr>
</tbody>
</table>

The table should, in addition, specify:

- the modus operandi;
- the grounds;
- whether the perpetrators belong to a group.

The (provisional) restriction of this survey to crimes of violence will ensure that:

- the data from the individual Member States are comparable, since the corresponding offences are punishable in all Member States,

- particularly in the introductory phase, the necessary organizational effort remains acceptable for Member States which do not as yet collect statistical data on these phenomena.

(1) The number of victims indicated concerns only murders committed.
3. **Definition**

All relevant statistics will be recorded in the Member States on the basis of the following definition:

**Xenophobic/racist/anti-semitic offences are crimes which**

- are directed against persons whom the perpetrators (owing to their intolerance) deny the right to stay or the right of residence in their vicinity or in the country as a whole on grounds of:
  
  . nationality or membership of an ethnic group
  . race, colour
  . religion
  . origin

  or

- are committed against persons/institutions/objects by perpetrators acting on xenophobic/racist/anti-semitic grounds.

4. **Information procedure**

With respect to the collection, processing and presentation of these Union-wide statistics, the Terrorism Working Party agreed that:

4.1. The statistical data in each Member State would be compiled or updated for a one-year period, namely from January to December each year.

4.2. By 31 March of each year, each Member State would send the previous year’s national figures to the Presidency, which would compile a comprehensive survey.

4.3. The President-in-Office would forward this compilation to the Member States as annual statistics.
4.4. This procedure would begin with 1994.

The year 1994 is exceptional in that, since the definition (see 3) cannot have retroactive effect, the Member States may also submit the figures on which the national definition was based at the time.

4.5. In view of the fact that, in the United Kingdom, statistics on racist offences are collected for the period running from April to March of the following year and since an updated account for the previous year is thus not possible by 31 March of the next year, the following exceptional arrangements will apply for the United Kingdom:

the United Kingdom will forward by 1 April each year the available figures on a provisional basis with an indication of the months covered.

These data will be supplemented on 1 June of each year when the United Kingdom forwards its overall figures to all Member States.

The data thus assembled will form the basis for discussion at the next meeting of the Terrorism Working Party.

5. Exchange of information at operational level

The Police Cooperation Working Party proposes organizing, via the existing liaison office network, the collection of operational data on racist and xenophobic acts in each country, to include all criminal offences (e.g. homicide, GBH, theft, arson, bomb attacks, desecration of graves, public racist utterances, support for crimes against humanity) as well as demonstrations, marches and propaganda campaigns engaged in by members of extremist parties, associations and groups.

Member States are ready to make existing information available to other Member States on request.
6. **Contact points**

The Member States have agreed to designate national correspondents within a network of contact points, who will gather and communicate the information needed for the work of the Terrorism and Police Cooperation Working Parties.

7. **Research**

There is apparently a broad consensus among Member States as to the general causes of the rise in xenophobic and racist attitudes and behaviour. Fear, scapegoating and aggression are spreading against a background of economic upheaval and cyclical difficulties, as a number of studies in recent years have shown.

As part of the comprehensive strategy to combat racist and xenophobic acts of violence, each Member State will draw up a list of existing or proposed cross-border cooperation agreements. Member States will see to it that in future such agreements contain aspects that contribute to the combat against racially motivated and xenophobic acts of violence, using a standard wording, which will be proposed by the Police Cooperation Working Party.

The German delegation has announced a report on a research project on the causes and expressions of racism directly related to work; this is a multi-stage project involving discussion, analysis and conclusions, to be followed by an evaluation and proposal stage at a symposium to be held in Münster in June 1995.

Lastly, an international seminar on racism and xenophobia is to be held in Paris in April 1995. The programme will include the sociological study of the phenomenon, comparative study of the relevant legislations and responses.
C. Comparative study of Member States' laws reveals discrepancies and lacunae

On the basis of the German Presidency's questionnaires and a descriptive summary of laws, the work undertaken has sought to pinpoint possible lacunae between Member States' laws and to make any specific proposals deemed necessary.

The German Presidency's summary divides offences into four main groups:

Group 1: legal provisions against incitement to racism and xenophobia.
Group 2: legal provisions against propaganda activities;
Group 3: legal provisions against criminal organizations, groups, etc.;
Group 4: other legal provisions against racism and xenophobia.

It should be noted that law reforms in progress in various Member States seek to introduce specific offences in connection with racism and xenophobia, more particularly with regard to crimes against humanity.

Group 1

Incitement to racial hatred is an offence in most Member States (see 9728/2/94 JUSTPEN 62 REV 2).

Incitement to hatred in different forms, particularly incitement to racial or religious hatred, is a specific offence in some Member States. To qualify as an offence, the incitement to hatred must be directed against groups, individuals or both.

In many cases, the incitement must have taken place in public.
Defending crimes against humanity also constitutes a specific offence in certain Member States.

In some Member States which have no specific laws in this area, conduct which constitutes incitement to racial hatred is nonetheless recognized as possibly constituting a general offence covering deliberate insults or defamatory acts or remarks.

**Group 2**

Most Member States in very different terms prohibit the circulation and distribution of written materials, illustrations or other media containing racist or xenophobic ideas.

It should nonetheless be noted in this area that national laws differ far more widely than in Group 1.

In one Member State there exists no offence in this respect.

Two Member States make national-socialist propaganda a specific offence.

The laws of another Member State cover only the transmission of grossly offensive, obscene or threatening messages without reference to the racist nature of such messages.

Other Member States prosecute statements made in public or with a view to dissemination which are intended to threaten, insult or denigrate a category of people on grounds of their membership of a certain group.

Lastly, one Member State prohibits agitation against an ethnic group by any person who, in a statement or communication which is not necessarily disseminated in public, threatens or expresses contempt for a group by allusion to its race, colour, nationality, ethnic origin or religious belief.
The wearing in public of racist insignia, symbols or emblems is prohibited in six Member States. However, the offence varies from one State to another. For instance, some laws do not refer to the racist nature of such symbols. In one Member State, the emblem worn must be that of an anti-constitutional organization. Another Member State requires the symbol to be such as to threaten, insult or denigrate a group on grounds of race, colour, national or ethnic origin or religion.

**Group 3**

The laws of all the Member States allow prosecution of members or leaders of legal persons or de facto groupings whose purpose is incitement to racial hatred or racial violence, although there is a major difference between two groups of countries:

- in the first group of States there is no specific offence relating to racist organizations; ordinary criminal laws relating to unlawful organizations is applied;

- in the second group of States there is a specific offence for racist organizations.

In addition, it is possible in some Member States to hold a legal person liable independently of the prosecution of its leaders and members.

In some Member States, the law provides expressly for the possibility of dissolving such associations, and even for the possibility of provisionally suspending the activities of an association during legal proceedings.

In those Member States which have no specific provisions on the matter, general legislation nonetheless allows for the dissolution of associations with racist aims or racist activities.
Group 4

Many Member States have laws which punish acts of racial discrimination. Laws vary considerably from one Member State to another. They mainly cover the supply of goods and services, but in some Member States also employment and other discriminatory practices.

Some Member States prohibit acts committed by persons representing the public authorities; others punish acts committed by individuals; yet others punish both types of act.

Moreover, some attacks on the exercise of freedom of worship are often punished. The principal instances covered are:

- desecration of burial places;
- disturbance of a religious service;
- disparagement of the various religions.

Lastly, some national laws prohibit the compilation of data on the basis of criteria relating to race or religion.

Proposals

Comparison of Member States' laws on racism and xenophobia shows that all States of the Union have laws allowing these phenomena to be countered.

However, the elements of the offence and the applicable procedures diverge.

It is accordingly proposed, as instructed by the Justice and Home Affairs Council (11768/94 JAI 78 of 6 December 1994), that the possibilities of bridging gaps in Member States' laws and international instruments be examined in greater detail with a view to removing obstacles to international judicial cooperation. This concerns in particular the following aspects.
1. **Improving international cooperation**

(a) In order to facilitate cooperation on seizures of racist publications, Member States should contemplate withdrawing – for the specific field of racism/xenophobia – any reservations which they entered on Article 5 of the aforementioned Convention on Mutual Assistance in Criminal Matters at the time of ratifying that instrument.

(b) Similarly, consideration should be given to measures enabling racist publications to be confiscated via mutual assistance in enforcement.

(c) Member States could designate contact points responsible for collecting and exchanging operational information on criminal matters of interest to the judicial authorities responsible for criminal proceedings.

(d) Member States should no longer be able to invoke Article 2 of the Convention on Mutual Assistance in Criminal Matters of 20 April 1959 which allows mutual assistance to be refused on the grounds that offences involving racism/xenophobia are political offences.

2. **Development of national laws**

Development of national laws must take place with the aim of smoothing out the obstacles to cooperation in the territory of the European Union, to the extent that those laws and the differences between them hinder such cooperation.

Criminal sanctions are only a part of the struggle against racism and xenophobia. Member States may therefore need to re-examine the balance of their criminal law, civil law, and administrative arrangements to ensure that the most effective measures are in place to address the differing problems which arise. This should be considered in the light of the final report of the Consultative Commission on Racism and Xenophobia and the wider work of the Council of Europe’s European Commission against Racism and Intolerance (ECRI).
C. CONCLUSIONS

A study of the various aspects of the problem of racism/xenophobia shows the need for continuous action and increased vigilance in combating these phenomena; police training must be maintained or stepped up; statistics on racist offences must be regularly evaluated to discern any increase in such incidents; lastly, Member States must endeavour to put laws in place to combat this oft-decried scourge; particular attention must be paid here to the problems of international judicial cooperation.

In these circumstances, the question arises of whether the phenomena of racism/xenophobia should not be monitored regularly and evaluated as accurately as possible so that decisive and effective action can be taken.