"A" ITEM NOTE

from: Permanent Representatives Committee

to: COUNCIL

Subject: Improved use of the instruments under Title VI of the Treaty establishing the European Union

COREPER agreed to the attached text at its meeting on 14 June 1995 and recommends that the Council approve it as an "A" item on the agenda for one of its meetings in the near future.
Eighteen months' experience of implementing the Treaty on European Union testifies to great reluctance to use the new instruments provided for in Title VI of the Treaty, namely common positions and joint actions, owing to lack of agreement among members of the Council as to their scope.

The result has been more frequent recourse than is necessary to the traditional instruments previously used in the context of intergovernmental cooperation: resolutions and recommendations.

In several instances resolutions have been preferred - when the Council could have adopted joint actions - owing to lack of agreement by its members on the scope of the latter.

However, cooperation in the fields of justice and home affairs requires significant legislative activity, if only to approximate Member States' laws and regulations on the basis of jointly defined principles, in accordance with the priorities.

The following principles may serve as guidelines for clarifying the method of using the various instruments available:

**I. Recommendations and resolutions**

Use of these instruments is not expressly provided for in TEU Article K.3(2), but subparagraph (a) of that paragraph makes such use possible when it states that the Council may "... promote, using the appropriate form and procedures, any cooperation contributing to the pursuit of the objectives of the Union".
Recommendations merely give Member States an indication of a desired course of action, without imposing any obligations on them. Their substance does not include any elements likely to have a specific legal basis. They have to avoid the use of terms likely to lead either Member States or third parties to believe that they give rise to obligations.

Resolutions could be used to establish a work programme or define priorities which subsequently become other legal instruments.

II. Common position

This instrument is currently little used. It could be used to establish principles common to the Member States or to propose a common interpretation of certain texts.

III. Joint action

In the light of experience over the last eighteen months, this instrument could be used in a wide variety of situations. At present four types of situation could be envisaged, amongst others:

1. The implementation of some joint actions does not require intervention by the Member States’ authorities, other than perhaps for financing the action undertaken.

2. The implementation of a number of joint actions requires amendment of the Member States’ administrative practices. States are obliged to make that amendment pursuant to the principles laid down in the joint action prior to a date set in the action.
3. The implementation of certain joint actions requires the amendment of the regulations in some Member States. Those States may make such amendments without parliamentary approval.

In such instances the joint action may oblige the Member States to adjust or amend their regulations by a date laid down in the action.

4. The implementation of certain joint actions may require certain Member States to amend national legislation. This type of joint action is difficult to use, as some Member States feel that joint actions, unlike Community directives, cannot impose an obligation on national parliaments.

It would be regrettable to stop using joint actions as an instrument on those grounds, since conventions, which would then be the only instrument available, are more difficult to use.

It could accordingly be agreed that, in such a case, the Council would decide that the joint action only obliges Member States to submit the necessary draft texts to their constitutionally competent authorities: the joint action thus adopted would therefore give rise to an obligation limited to referral to national parliaments in cases where the latter have to adopt an amendment to their legislation.

5. The above examples are neither rigid nor exhaustive, but it is necessary that in every instance the final clauses make clear the scope of the obligation deriving from the joint action.
IV. **Conventions**

The choice of this instrument did not give rise to special difficulties. It might perhaps be possible, where speed is of the essence, to incorporate in the act adopting a convention a provision committing Member States to set the national procedure for adoption in motion before a deadline.

It would on occasion be useful also to provide for notification to the Secretary-General of the Council of measures adopted pursuant to a convention.

V. **Final clauses**

In the light of the above comments on the scope of the various instruments under Title VI of the TEU, the following final clauses could be adopted:

"**The Council recommends that Member States ...**"

"**The Council considers that ...**"

"**As regards the interpretation of ..., the Council [hereby adopts] [suggests to the Member States] the following principles**"

"**This joint action shall enter into force on ...**"

"**Member States shall take the measures necessary for the implementation of this joint action by ...**"

"**Member States shall take the measures necessary for implementation by ...**"
"The Member States shall submit the measures necessary for the implementation of this joint action to the competent national authorities with a view to adoption, by ...”.

Provision may be made in a final clause of an instrument, on a case-by-case basis, that Member States are to inform the Secretary-General of the Council of the measures taken for implementation of the said instrument or, if appropriate, of difficulties that have arisen in this respect.