COUNCIL OF THE EUROPEAN UNION

Brussels, 14 July 2000

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OUTCOME OF PROCEEDINGS

On: 12 July 2000

General

The Presidency stressed that every effort should be made to ensure that the convention would be finalised in good time to enable it to be signed in Palermo as planned. In addition it felt that the maximum level of agreement should be achieved among EU delegations on major outstanding issues prior to the final round of negotiations on the convention. Furthermore it would be very useful if delegations would undertake appropriate contacts with non-Member States. The Presidency also confirmed that it would schedule EU coordination meetings for each day of the UN session in July and would arrange for discussions on the protocols to the convention during the next MDG meeting in September.

Article 2 (Scope of application)

The Presidency sought approval for a negotiating strategy for this article on the basis that a broad approach should be adopted to the concept of transnational organised crime in the convention while recognising that certain concessions might be required in that area. In particular, the Presidency
highlighted the value of providing that the offences created by the convention would be autonomous and a text it had previously circulated covered that point. Furthermore it was necessary to address the implications of Article 2 for the international cooperation provisions of the convention.

The Netherlands delegation agreed with the general strategy proposed by the Presidency and with the Presidency proposal for autonomous offences. It was of the view that it would be desirable that the Presidency and US proposals covering the relevant international cooperation aspects could be amalgamated. It also felt that the international cooperation elements should be dealt with in the individual cooperation provisions rather than in Article 2.

The Presidency informed the MDG that the US text had been formally tabled in the UN. Its overall conclusion was that there was general support for its proposed negotiating strategy which would be supplemented by specific discussion among delegations in Vienna.

**Article 2 bis (Use of terms)**

The Presidency indicated that the Common Position adopted in March 1999 made it difficult for EU delegations to accept the adoption of a list of offences in connection with this article. Furthermore it was of the view that any definition of organised crime should not include terrorism which was being dealt with under other instruments.

While the Netherlands and Swedish delegations agreed with the Presidency, the Spanish delegation stated it was in favour of a list. The Presidency noted the Spanish position while reminding the Spanish delegation of the terms of the Common Position.

**Article 4 bis (Measures to combat money laundering)**

The Presidency outlined the difficulties that had arisen in relation to the adoption of a text for paragraph 3 which would create obligations arising from the FATF recommendations. In the circumstances it was unlikely that such a text could be agreed at UN level. Notwithstanding that situation, the Presidency was satisfied that a reference to the FATF recommendations should appear
in the text and that it should be as strong as possible. The Commission and other delegations agreed with the Presidency approach. The Netherlands also suggested that, in view of the fact that the FATF recommendations were not binding, it could be appropriate to refer to the FATF itself rather than to the recommendations in the text. Support was also expressed by delegations, including the Commission, for the retention of Article 4 even if paragraph 3 were to be deleted.

The Presidency concluded that delegations strongly supported the retention of a specific reference to the FATF in paragraph 3 while recognising that a binding provision was unlikely to be achieved. At the very least some reference should be made to the FATF in the text, even if it would not be of a binding nature.

**Article 10 (Extradition)**

The Presidency referred to the different positions that had emerged during the UN negotiations regarding the application of the principle of *aut dedere aut judicare*. For that purpose the Presidency suggested that the principle could be applied on a mandatory basis where extradition is refused on the grounds of nationality and on an optional basis where extradition is refused because of the type of punishment that could be imposed. The Danish delegation said that it could accept such a proposal and the Presidency indicated that further coordination on Article 10 would be undertaken during the negotiations in Vienna.

**Article 14 (Mutual legal assistance)**

The Presidency agreed with the Danish delegation that bank secrecy should be specifically excluded as a ground on which legal assistance could be refused.

**Article 24 (Relation with other conventions)**

The Presidency asked the MDG to consider whether delegations could accept that the issue of the relationship between the convention and other treaties should be dealt with in a single article and that Parties to the convention should not be able to refrain from implementing the convention on the basis
of bilateral treaties. In that regard it should be the case that a requesting Party would decide the instrument under which a request would be dealt with.

The Netherlands delegation agreed with the Presidency propositions and it also queried whether it was necessary to retain Article 24. The Luxembourg delegation was in favour of maintaining the separate provisions of the convention which referred to its relationship with other instruments, in particular Article 14.8.

The Presidency concluded that there appeared to be general agreement with its views. It felt that it would be better to keep the article in the interests of clarity and that it would be possible to meet the concerns of the Luxembourg delegation with a suitably drafted provision in Article 24.

**Community accession to the convention**

The Commission reported that it was in the process of submitting proposals to the UN Secretariat along the lines circulated to Member States for their comments. Some amendments had been made in the light of comments received from the Netherlands delegation. The German delegation said that it could agree with the Commission proposals.