



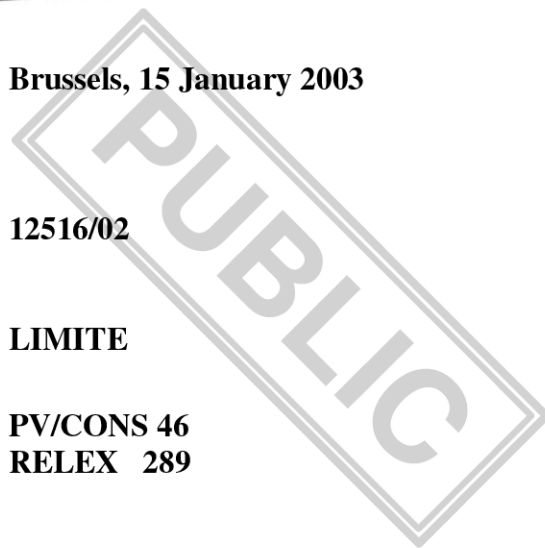
**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 15 January 2003**

**12516/02**

**LIMITE**

**PV/CONS 46  
RELEX 289**



**DRAFT MINUTES**

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Subject : **2450<sup>th</sup> meeting of the Council of the European Union (GENERAL AFFAIRS  
and EXTERNAL RELATIONS), held in Brussels on 30 September 2002**

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**Meeting on External Relations**

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**1. Adoption of the agenda**  
12245/02 OJ/CONS 48 RELEX 171

The Council adopted the above agenda.

**2. Communication from the Commission on Trade and Development**  
12301/02 WTO 111 DEVGEN 127

The Council held an open debate on the Commission communication of 18 September 2002 on "Trade and development: assisting developing countries to benefit from trade". At the end of the debate, the Presidency invited the Council's preparatory bodies to pursue discussion with the objective of preparing Council conclusions for the session of 18 November 2002.

**3. EU-Switzerland relations : state of play**  
12396/02 AELE 40 FISC 246

Following an exchange of views, where the outstanding reservations on doc. 12396/02 AELE 40 FISC 246 were lifted, the Council adopted the following conclusions:

"The European Union attaches great importance to achieving a successful outcome, well before the end of the year, to the on-going negotiations with Switzerland on the taxation of savings. The outcome has to be compatible with the Feira European Council conclusions to the effect that "exchange of information, on as wide a basis as possible, shall be the ultimate objective of the EU in line with international developments".

The Swiss authorities insisted that the tax negotiations could not start until the EU had adopted the mandates for negotiations in other areas in which Switzerland has shown a particular interest. To accommodate this approach, the EU adopted on 17 June 2002 the relevant mandates. The EU is fully prepared to press ahead in all negotiations with a view to achieving positive results as soon as possible. However, it is in this perspective crucial that the Swiss authorities should adopt the necessary steps so that the negotiations on the taxation of savings make progress quickly. The Council shares the disappointment of ECOFIN Ministers on the lack of progress so far in the negotiations on taxation of savings.

Should a successful outcome not be achieved, the Council considers it would be difficult to reach agreement in Council to conclude negotiations with Switzerland in other areas.

The ECOFIN Council will review the situation with regard to these negotiations at its meeting on 8 October, taking into account the essential interests of the EU."

**4. Russia**

- Kaliningrad

12432/02 NIS 109 COEST 36 VISA 133 ELARG 297 PECOS 177

The Council adopted the conclusions as set out in Annex I.

**5. New Neighbours Initiative**

12260/02 COEST 35 NIS 106 PESC 362

On the basis of a joint presentation by High Representative Javier Solana and Commissioner Patten, the Council had an exchange of views on relations between the future enlarged EU and its Eastern neighbours. The Council re-confirmed its conviction that EU enlargement will provide a good opportunity to enhance relations between the European Union and the countries concerned with the objective of creating stability and narrowing the prosperity gap at the new borders of the Union.

The Council discussed in particular relations with Ukraine, Moldova and Belarus, while underlining that these countries should be the subject of a differentiated approach. The Council tasked its relevant bodies to continue work on this issue with a view to conclusions being adopted at a forthcoming session and in the perspective of the European Council in Copenhagen.

It was also underlined that, beyond the question of Eastern neighbours, the broader question of "Wider Europe" deserved consideration.

**6. International Criminal Court**  
12488/02 COJUR 10 USA 37 PESC 374

The Council adopted the conclusions as set out in Annex II. (Cf. also 12488/1/02 COJUR 10 USA 37 PESC 374 REV 1 + REV 2 (it)).

**7. Western Balkans**  
12367/02 PESC 368 COSDP 294 COWEB 68 YU 37  
+ ADD 1

The Council heard a report by Mr Javier Solana, Secretary-General/High Representative, and by Mr Chris Patten, Commissioner responsible for External Relations, on their recent visits to Bosnia and Herzegovina and on recent developments in that region.

The Council adopted the conclusions as set out in Annex III.

**8. Middle East**  
12316/02 PESC 371 COMEP 4

The Council adopted the conclusions as set out in Annex IV.

**9. Zimbabwe**

This item was not discussed during the formal session.

**10. EuroMediterranean Investment Facility**

The Council took note of the positions set out by the Italian delegation and the Commission regarding the financing of the Facility for Euro-Mediterranean Investment and Partnership. It was noted that, in line with the Conclusions adopted by the ECOFIN Council on 20 June 2002, the Facility should be officially launched on 18 October in Barcelona, on the basis of the financing package already proposed by the Commission.

It was further noted that the operation of the Facility would be reviewed by the Council one year after its launch, and that this review would include financing aspects.

## 11. A.O.B

- Ivory Coast

This item was not discussed during the formal session.

- Shipbuilding/South Korea

The Council, on the basis of an intervention by Commissioner Lamy, took note of the negative outcome of the negotiations between the Commission and the Korean authorities and of the next steps to be taken with regard to the WTO proceedings and the temporary defensive mechanism in favour of EU shipbuilding.

- Steel - International context

The Council took note of a presentation by Commissioner Lamy concerning the general situation on the international steel market and his current reflections on the problem of world-wide structural over-capacity in the steel sector.

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Re. item 4

**RUSSIA - KALININGRAD - COUNCIL CONCLUSIONS**

" The Council welcomed the Communication on Kaliningrad transit presented by the Commission on 18 September 2002 in response to the request by the Seville European Council.

In view of the importance of the strategic partnership between EU and Russia, the EU is ready to make a special effort to accommodate the concerns, which Russia has raised about the future transit of persons between Kaliningrad oblast and the rest of Russia. To this end the EU will apply the Schengen regime with flexibility.

The EU will support Russian efforts to promote the economic development of Kaliningrad Oblast and to strengthen cross-border co-operation along the borders to Russia, including measures to improve border management and border infrastructure in order to facilitate the passage of borders for legal purposes.

The Council underlined the need to find a solution to the transit of persons and goods to and from Kaliningrad on the basis of the following principles, keeping in mind the conclusions of the European Council in Seville:

- to ensure that the EU and its current and future Member States retain their sovereign right to ensure the security and safety of all current and future EU citizens by controlling their borders and the movement of people and goods on their territory;
- to avoid taking any steps which might hinder the success of the enlargement process. This includes safeguarding the integrity of the acquis the EU has required the candidates to adopt, and ensuring that no obstacle to the lifting of internal border controls is created by any "solution" for Kaliningrad;
- to address Russian concerns in a manner consistent with the enlargement process and the political aim of creating a strategic partnership and enhancing co-operation, not least on issues related to border management.

The Council confirmed the continued relevance of its common position of 13 May 2002.

The Council discussed the Communication from the Commission and agreed that it should provide the basis for discussions with Russia to be undertaken by the Presidency and the Commission, as part of a mutually acceptable global package, in close consultation with the candidate countries, and emphasized the following elements:

- A facilitated transit document (FTD) would be introduced on condition of Russian co-operation in the facilitation of the scheme. The document would be valid for direct transit from one third country to another part of the same country, for a limited period of time (e.g. 24-36 hours). Technical work on the introduction of FTDs should start as soon as possible. The EU will be ready to discuss with the relevant candidate countries the situation until the FTD will be implemented.
- With regard to visa free non-stop trains the Presidency and the Commission will discuss with Lithuanian authorities the issue of a feasibility study. A decision could only be taken by the enlarged EU on the basis of a thorough evaluation of the political and legal aspects and once the technical obstacles have been overcome.
- Legal guarantees should be part of the Accession Treaty to the effect that any development of the Schengen acquis to take account of the specific situation of Kaliningrad would not, in itself, delay or prevent the full participation of Lithuania in the Schengen regime, including the lifting of internal border controls.
- The EU would provide assistance to Lithuania for additional costs of the implementation of the measures in a Kaliningrad "package".
- For a solution to be reached, Russia needs to cooperate on a number of measures *inter alia* on the expansion and opening of consular offices. An obligation for readmission for persons covered by the above would be an integral part of a solution. The general question of an early conclusion of a readmission agreement with Russia will be pursued.
- On movement of goods, the customs transit regime, which will apply after enlargement, ensuring the free movement of goods between Russia and Kaliningrad across the Community without customs duties, is apt and existing Conventions/procedures offer appropriate flexibility in terms of formalities.

The Council agreed that the Russian proposal to open discussions on defining the necessary conditions for the eventual establishment of a visa-free regime is separate from the discussions on Kaliningrad, and will be considered as a long term issue.

In light of contacts with the Russian side, the Council will revert to the matter at its meeting on 21 - 22 October 2002."

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**Re item 6****COUNCIL CONCLUSIONS ON THE ICC**

"The Council confirms that the European Union is firmly committed by the EU Common Position to support the early establishment and effective functioning of the International Criminal Court and to preserve the full integrity of the Rome Statute. The European Union reaffirms its determination to encourage the widest possible international support for the ICC through ratification or accession to the Rome Statute and its commitment to support the ICC as a valuable instrument of the world community to combat impunity for the most serious international crimes.

The International Criminal Court will be an effective tool of the international community to buttress the rule of law and combat impunity for the gravest crimes. The Rome Statute provides all necessary safeguards against the use of the Court for politically motivated purposes. It should be recalled that the jurisdiction of the Court is complementary to national criminal jurisdictions and is limited to the most serious crimes of concern to the international community as a whole.

The European Union will endeavour to secure that the Court will meet the highest standards of competence, fairness, due process and international justice. The European Union will do its utmost to ensure that highly qualified candidates will be elected as judges and prosecutors.

The Council has taken note of the proposal by the United States for new bilateral agreements with ICC States Parties regarding the conditions for surrender to the Court.

The Council notes that a number of bilateral and multilateral treaties between individual Member States and the United States already exist, as well as treaties with third states, which are of relevance in this context and on which an inventory has been established. The Council notes that Member States are ready to engage with the United States in a review of these arrangements which may fall into the category of agreements defined in Article 98, paragraph 2 of the Rome Statute.

The Council has developed the attached set of principles to serve as guidelines for Member States when considering the necessity and scope of possible agreements or arrangements in responding to the United States' proposal.

The Council recalls that the European Union and the United States fully share the objective of individual accountability for the most serious crimes of concern to the international community. The ad hoc tribunals for the former Yugoslavia and Rwanda were created as a result of our common efforts.

The Council expresses the hope that the United States will continue to work together with its allies and partners in developing effective and impartial international criminal justice. To this end, the Council proposes to develop a broader dialogue between the European Union and the United States on all matters relating to the ICC, including future relations between the United States and the Court. In particular this dialogue should address the following issues:

- The desirability of the United States re-engaging in the ICC process - the United States is entitled to be an observer to the Assembly of States Parties;
- The development of a relationship entailing practical cooperation between the United States and the Court in specific cases;
- The application of presidential waivers of the ASPA legislation to the main provisions of this legislation, in particular vis-à-vis Member States and their associated countries.

The Council notes that Member States will keep the Council informed about any new developments.

The Presidency will convey these conclusions to the United States, noting that they represent the EU position in response to the United States' concerns.

The Council will remain committed to the ICC and will keep developments under review."

Annex to Annex II

**EU Guiding Principles concerning Arrangements between a State Party to the Rome Statute of the International Criminal Court and the United States Regarding the Conditions to Surrender of Persons to the Court**

The guiding principles listed below will preserve the integrity of the Rome Statute of the International Criminal Court and – in accordance with the Council Common Position on the International Criminal Court – ensure respect for the obligations of States Parties under the Statute, including the obligation of States Parties under Part 9 of the Rome Statute to cooperate fully with the International Criminal Court in its investigation and prosecution of crimes falling within the jurisdiction of the Court.

The guiding principles are as follows:

- Existing agreements: Existing international agreements, in particular between an ICC State Party and the United States, should be taken into account, such as Status of Forces Agreements and agreements on legal cooperation on criminal matters, including extradition;
- The US proposed agreements: Entering into US agreements – as presently drafted – would be inconsistent with ICC States Parties' obligations with regard to the ICC Statute and may be inconsistent with other international agreements to which ICC States Parties are Parties;
- No impunity: any solution should include appropriate operative provisions ensuring that persons who have committed crimes falling within the jurisdiction of the Court do not enjoy impunity. Such provisions should ensure appropriate investigation and – where there is sufficient evidence – prosecution by national jurisdictions concerning persons requested by the ICC;

- Nationality of persons not to be surrendered: any solution should only cover persons who are not nationals of an ICC State Party;
  - Scope of persons:
    - Any solution should take into account that some persons enjoy State or diplomatic immunity under international law, cf. Article 98, paragraph 1 of the Rome Statute.
    - Any solution should cover only persons present on the territory of a requested State because they have been sent by a sending State, cf. Article 98, paragraph 2 of the Rome Statute.
    - Surrender as referred to in Article 98 of the Rome Statute cannot be deemed to include transit as referred to in Article 89, paragraph 3 of the Rome Statute.
  - Sunset clause: The arrangement could contain a termination or revision clause limiting the period in which the arrangement is in force.
  - Ratification: The approval of any new agreement or of an amendment of any existing agreement would have to be given in accordance with the constitutional procedures of each individual state.
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**Re. Item 7****WESTERN BALKANS – COUNCIL CONCLUSIONS****BOSNIA AND HERZEGOVINA**

"The Council noted the recent visits to Bosnia and Herzegovina by High Representative Solana and Commissioner Patten and agreed that the Road Map was now substantially completed due to further progress by the Bosnian authorities. This moves the country forward towards Europe.

In this context, the Council emphasised the crucial importance of the 5 October general elections, which will offer the citizens of Bosnia and Herzegovina the opportunity to elect a government that will take their country further down the road to European integration. It adopted the annexed "Message to the people of Bosnia and Herzegovina".

**FEDERAL REPUBLIC OF YUGOSLAVIA**

The Council recalled that a rapid adoption of the Constitutional Charter and of the Action Plan on internal market and trade and customs, in full accordance with the Agreement of 14 March 2002, is essential in order to make further progress towards the EU.

Welcoming the orderly way in which the first round of presidential elections in Serbia took place, the Council called on all parties to contribute to the continuation of a satisfactory conduct of ongoing electoral processes in Serbia and in Montenegro.

**FORMER YUGOSLAV REPUBLIC OF MACEDONIA**

The Council welcomed the orderly way in which the elections were conducted in the former Yugoslav Republic of Macedonia (FYROM). It looked forward to the rapid formation of a new Government resolutely committed to the full implementation of the Ohrid Framework Agreement and to the Stabilisation and Association Process. The European Union will remain strongly committed to the future of FYROM and will actively support a reform-oriented FYROM on its way to Europe.

The Council commended the departing EU Special Representative, Mr Alain Le Roy, for his extraordinary commitment to and achievements for stability and democracy in FYROM. The Council agreed to appoint Ambassador Alexis Brouhns as the new EUSR resident in Skopje and invited its competent bodies to rapidly prepare the necessary decisions to this end.

**ALBANIA**

The Council welcomed the prevailing political stability in Albania following the June Presidential elections and the commitment of the new government to address key reforms. It encouraged Albania to take advantage of the present situation to ensure the rapid implementation of its reform agenda.

## COOPERATION WITH ICTY / CROATIA

The Council reaffirmed its strong support for the work of the International Criminal Tribunal for the Former Yugoslavia (ICTY). Co-operation with the Tribunal is an obligation for all countries and parties of the region, regardless of their domestic laws. Failure to co-operate fully with ICTY would jeopardise further movement towards the European Union.

In this context, the Council called upon the authorities of Croatia to co-operate fully with ICTY in the case of General Janko Bobetko."

Annex to Annex III

### **Message to the people of Bosnia and Herzegovina from the Council of the European Union**

"You will face a crucial choice in the 5 October general elections: You must decide whether or not to vote for reform, prosperity and a promising future as part of mainstream Europe.

We encourage you to turn out in strength to vote on election day. Your vote will make a difference just as voters in your neighbouring countries have made a difference. We encourage you to give a mandate to those who are genuinely committed to the economic and legal reforms that Bosnia and Herzegovina needs.

You can not change the past, but you can shape your future. We urge you to seize this chance to do so."

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**Re. item 8****MIDDLE EAST – COUNCIL CONCLUSIONS**

"The Council expressed grave concern about the current situation in the Middle East. It unreservedly condemned the latest wave of violence and terrorism and those responsible. After a period of 6 weeks without major terrorist incidents there had been hope for renewed political negotiations between the parties. The Council welcomed the adoption of UNSCR 1435. It urged both parties to show maximum restraint and to comply fully with this resolution. Noting that Israeli forces had begun to withdraw from the compound of the President of the Palestinian Authority, the Council reiterated that restricting freedom of movement of the Palestinians and their leadership and destroying their infrastructure does not contribute to fighting terror, or to solve Israel's legitimate security concerns. More than ever, Israelis and Palestinians must return to the negotiating table.

The Council welcomed the outcome of the Middle East Quartet meeting on 17 September in New York, in particular the elements for a "road map", including the holding of an international conference, leading towards a final, just and comprehensive settlement with two States living side by side in peace and security by 2005. This roadmap should be based on parallel and reciprocal steps by the parties on political, security and economic issues and contain definite timelines. Implementation by the parties should be monitored and assessed by the Quartet.

It urged the Palestinians to push ahead with the reform efforts and in particular to cooperate on reform of the Palestinian security services with Israel, the US, the EU and regional partners with the aim of putting an end to terrorism in all its forms. The Council encourages the Palestinians to hold free and fair elections early in 2003, expresses the willingness of the EU to offer appropriate assistance, and recalls that steps must be taken by Israel to ensure a satisfactory holding of these elections. The Council urged Israel to facilitate the reform efforts by lifting curfews and closures, withdrawing to its positions held prior to 28 September 2000, by resuming transfer of Palestinian VAT and customs revenues and stopping settlement activities in the occupied territories. The Council expects EU representatives to be granted continued access to the Palestinian President and other PA officials.

The Council underlined the urgent need to alleviate the humanitarian situation and called on Israel to allow full, safe and unfettered access for international and humanitarian personnel. The Council reiterated the need to respect international humanitarian law."

Over lunch, under this agenda point, Ministers also had an exchange of views on the situation in relation with Iraq and - on the basis of briefings by the EU Security Council Members - on current efforts in New York on a draft UNSC Resolution. They reiterated the position set out at their informal meeting in Elsinore last month, including the overall aim of the elimination of weapons of mass destruction, the need for unconditional return of UN inspectors and unfettered access, and the need for the situation to continue to be addressed in the UN Security Council track.