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EHG(V)(80)16

-- COPY NO.

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5 June 1980

EUROPEAN COUNCIL, VENICE

12/13 JUNE 1980

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COMMON JUDICIAL AREA

Brief by Foreign and Commonwealth Office  
and Home Office

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OBJECTIVE

To make clear that the UK is prepared to sign the draft Convention on Cooperation in Criminal Matters (which is primarily concerned with extradition among the Nine), but to give the Dutch support on the general issue of the future of the Common Judicial Area.

POINTS TO MAKE

1. UK will be disappointed if the Convention does not come into force. *But see para 4*
2. Difficulties in reconciling common law and continental legal systems likely to make future work on the Common Judicial Area increasingly unprofitable, especially in the field of civil law.

BACKGROUND

1. President Giscard launched the idea of a Common Judicial Area among the Nine at the European Council in December 1977. The rationale of this proposal was that criminals should not be allowed to profit from the free movement between European countries provided for by the Treaty of Rome. The French later proposed that the Common Judicial Area should include civil law.

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2. Following President Giscard's proposals, a group of officials has met within the framework of Political Cooperation and negotiated a draft Convention among the Nine on Cooperation in Criminal Matters. The Convention is based on the principle that States shall either extradite or consider prosecution of suspected criminals. Initially the draft Convention seemed likely to raise problems for the UK, since it would have required us to take much wider extra-territorial jurisdiction than exists at present with consequent practical difficulties, because of the need to call witnesses in UK courts. It would also have required us to abandon some of the traditional features of our extradition system, eg the establishment of a prima facie case against the fugitive. However, the rest of the Nine have proved accommodating, and the draft Convention as agreed by officials is now acceptable to the UK. As it stands, the treaty is potentially useful, but by no means essential to us.

3. The Dutch, however, who gave no hint of this in the course of the negotiations, are now expected to announce that they will not sign the Convention. Their principal objections to this Convention and to the whole concept of a Common Judicial Area are that it is unnecessary and will reduce the credibility of the Council of Europe (where similar Conventions already exist) and at the same time undermine Community institutions, as it does not give the European Court a role. (The UK is opposed to any such extension of the European Court's jurisdiction). The Convention can only come into force when all Nine have ratified it, so that refusal by one of the Nine to sign it would effectively kill it, and with it probably future work on the Common Judicial Area, since this Convention has been seen by the French, in particular, as the first step towards the creation of the Common Judicial Area.

4. The UK recognises that there is a certain logic in the idea of a Common Judicial Area, but doubts whether it would be useful to embark on any further work on it at this stage. Given the difference between the common law and the continental legal systems,

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in practice such work is likely to be increasingly difficult and its results meagre.

5. If, as a result of the Dutch decision, further progress in cooperation on criminal matters is impossible, the French may press instead for discussions on the civil field. However there would be little point in trying to create a Common Judicial Area in matters of civil law, since this would duplicate the work of other bodies, e.g. the Council of Europe and The Hague Conference on Private International Law. So far French proposals in this field have also failed to take account of the existence of separate jurisdictions in England, Scotland and Northern Ireland, and are wholly impractical for the UK.

Foreign and Commonwealth Office  
and Home Office

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REFERENCE

Dutch Coreu telegram announcing their decision not to sign the Convention.

[NOTE:

Revisions have been underlined.]

Foreign and Commonwealth Office and Home Office  
9 June 1980

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ENG(V)(80)16 Revise

REF.

RESTRICTED

FM ROM COREU  
TO ALL COREU  
R O U T I N E  
CPE MUL ETR 2150 (CPE BIL ETR 235 HAYE)  
07.06.1980 08.00 HEURES

FM LA HAYE COREU  
TO ROME COREU - IMMEDIAT  
INFO ALL COREU - ROUTINE  
CPE/BIL ETR 235  
06-06-1980 17.16 HEURES

DIFFUSION RESTREINTE  
DISTRIBUTION GENERALE

OBJET: ESPACE JUDICIAIRE

THE NETHERLANDS INFORM THEIR PARTNERS THAT THE QUESTION OF SIGNATURE OF THE DRAFT CONVENTION AMONG THE MEMBER STATES OF THE EUROPEAN COMMUNITIES ON COOPERATION IN CRIMINAL MATTERS, SCHEDULED FOR THE ABOVE-MENTIONED MEETING, HAS BEEN SUBMITTED TO ITS GOVERNMENT AND THAT THE COUNCIL OF MINISTERS IN ITS

SESSION OF 6 JUNE, 1980, HAS DECIDED THAT THE SAID DRAFT CONVENTION WILL NOT BE SIGNED FOR THE KINGDOM OF THE NETHERLANDS TAKING INTO ACCOUNT ITS CONTENT AND STRUCTURE. THIS DECISION IS BASED ON CONSIDERATIONS OF BOTH A POLITICAL AND A LEGAL NATURE WHICH ARE RELATED TO THE PRACTICAL UTILITY OF THE CONVENTION, ITS LEGAL CHARACTER, ITS POTENTIAL EFFECTS, ON THE FUNCTIONING OF CERTAIN INTERNATIONAL ORGANISATIONS, IN PARTICULAR WITH A VIEW TO INTERNATIONAL AGREEMENTS CONCLUDED OR ENVISAGED IN THE FRAMEWORK THEREOF, AND THE CHANCES THAT THE CONVENTION WILL FAIL TO RECEIVE PARLIAMENTARY APPROVAL.

THIS DECISION IS HOWEVER NOT TO BE UNDERSTOOD AS A CHANGE IN EXISTING DUTCH POLICIES AND PRACTICES IN REGARD TO OTHER MEMBER STATES IN MATTERS OF EXTRADITION.

FIN DE TEXTE./.

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