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RESTREINT

EUROPOL 100

NOTE

from : the Presidency

dated: 27 September 1994

Subject: Conclusion of the meeting of the K.4 Committee of 21/22 September 1994 on
point 2 : Draft convention on the establishment of Europol

At its meeting of 21/22 September 1994, the K.4 Committee studied the following major outstanding problems regarding the draft Convention on the establishment of Europol on the basis of document 9251/94 EUROPOL 95.

I. AREAS OF ACTIVITY (article 2)

The Presidency pointed out that the two main problems in regard to article 2 are :

- the inclusion of terrorism (article 2) ;
- the procedure for the extension of the scope of activities of Europol.

A. Inclusion of terrorism

The Spanish delegation stressed that, in conformity with its interpretation of Article K.1.9 of the Treaty on European Union, terrorism should be included in the initial activities of Europol.

The Presidency suggested that the aforementioned differences should be discussed in the Council with the aim of finding a settlement. If no agreement is reached within the Council within six months, a direct application may be made to the Court of Justice of the European Communities.

The Presidency pointed out that a decision should be taken by the Council by a 2/3 majority according to the provisions of article K.3.2.c of the TEU (implementing measure).

The Belgian, Greek, Netherlands and Italian delegations subscribed to the proposal of the Presidency. The Netherlands delegation emphasized that ad hoc arrangements should be avoided. The framework offered by Title VI has to be fully respected.

The French and United Kingdom delegations opposed the granting of any role to the Court of Justice in this field. The Council acting by unanimity is the appropriate body to settle any differences of opinion.

The Danish delegation shared the basic philosophy of the views of these two delegations. Arrangements being made in the framework of the customs information system cannot be transposed to Europol.

In search of a compromise, the Presidency suggested exploring the possibility of recourse to arbitration procedures as set out in the text on the European University Institute and European Schools. At its meeting of 26-30 September 1994, the working group should study alternative solutions.

The Presidency concluded that the K.4 Committee should pursue the examination of this issue at its next meeting in October focusing its attention on the role of the European Court of Justice, Arbitration and the application of article K.3.2.c.

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A majority of delegations expressed the view that extension of the activities of Europol should be decided by the Council. Several delegations felt that the decisions should be taken by unanimity.

The management board should have an important role in the preparation of these decisions and must in particular set out the budget- and staffing implications for Europol.

The Presidency noted that certain forms of terrorist activities are covered by the present article 2, paragraph 2, first phrase proposed by the Presidency and paragraph 2a as suggested by the Belgian delegation.

One option would be the adoption of a declaration in which the Council would commit itself to decide on the combatting of terrorism as an activity of Europol in 1996. It announced that it will reflect on possible solutions on the basis of the work of the Committee.

II. LEGAL RECOURSE

The Committee discussed the problem of legal recourse (doc. 8074/1/94 EUROPOL 64 REV 1 and 8133/94 EUROPOL 66) in case of :

- differences between Member States or between Member States and Europol;
- proceedings brought by natural persons for infringement of the right of protection of their personal data;
- disputes between Europol and its employees.

A. Differences between Member States or between Member States and Europol

B. Proceedings by natural persons for infringement of the right of protection of their personal data

1. All delegations agreed with the suggestion of the Presidency, providing that anyone may bring proceedings for infringement of his rights under articles 17, 18, 20 or 35 or any other provision of this Convention for the protection of the rights of individuals in the court or before the authority competent under the national law of any Member State in accordance with the procedural provisions of the Member State concerned.

The Danish delegation emphasized the need to take into account the provisions of article 24 paragraph 2.

2. Article 37 paragraph 4 of the Presidency proposal (doc. 8133/94 EUROPOL 66) provides that the Court of Justice of the European Communities shall have jurisdiction to give preliminary rulings on the interpretation of this Convention.

Several delegations, especially the Belgian and Netherlands delegations, favoured this option. The Belgium delegation noted that Member States had already ratified a number of important instruments of the Council of Europe in fields of human rights and data protection. Preliminary rulings by the European Court of Justice can prevent divergent application and interpretation of the Convention.

Other delegations such as the French and United Kingdom delegation opposed any preliminary jurisdiction by the European Court of Justice. National courts are the appropriate bodies for these recourses.

The Irish delegation informed the Committee that some of the provisions of article 37 in document 8074/1/94 EUROPOL 64 REV 1 are unacceptable because the Irish Constitution does not provide for legal recourse in these cases.

The Presidency informed the Committee of its intention to continue the discussion of this item at its next meeting on 12/13 October 1994.

C. Disputes between Europol and its employees

The Presidency suggested that the Court of First Instance of the European Communities should have jurisdiction in all disputes between Europol and its employees.

The Netherlands delegation agreed to this suggestion, whereas the French and United Kingdom delegations opposed any role for the European Court of Justice. The United Kingdom delegation was of the view that jurisdiction in this area should be given to Dutch courts.

The Luxembourg delegation considered that the content of the staff regulation is a major element to be taken into account in discussions on jurisdiction in disputes between Europol and its employees.

The Danish delegation said that it would be useful to know how disputes are settled in other international organisations.

At the end of the debate, the Presidency announced that it maintained its proposal featuring in documents 8074/1/94 EUROPOL 64 REV 1 and 8133/94 EUROPOL 66. It suggested to continue the discussion at the next meeting of the Committee taking into account e.g. the observations made by the Danish delegation.

III. PARLIAMENTARY CONTROL

The Presidency noted that article K.6 provides that :

- the Presidency and the Commission shall regularly inform the European Parliament of the discussions taking place in the areas covered by Title VI;
- the Presidency shall consult the European Parliament on the principal aspects of activities in the areas referred to in this Title and shall ensure that the view of the European Parliament are duly taken into consideration.

The Netherlands delegation presented its views on parliamentary accountability set out in document 8672/94 EUROPOL 78 (cf. annex).

The Belgian and Italian delegations expressed support for the approach of the Netherlands delegation. At least an annual report should be presented to the European Parliament. The representative of the Commission emphasized the need for a maximum degree of clarity and transparency.

The Danish, French, United Kingdom and Austrian delegations were of the view that article K.6 is sufficient and does not need to be elaborated. The Austrian delegation insisted that the right of protection of personal data should not be hampered by the obligation to inform the European Parliament.

IV. AUDITING OF EUROPOL

In regard to the auditing of Europol, the Presidency presented the following two options to the Committee :

- auditing by the European Court of Auditors;
- auditing by a joint audit committee composed of three auditors from the courts of auditors of the Member States.

The Belgian, Danish, Greek, Italian, Luxembourg, Netherlands and Portuguese delegations favoured the first option, for instance for an initial period of three years.

The French, Irish and United Kingdom delegations preferred the second option.

The Netherlands delegation noted that a similar discussion is taking place in Coreper on auditing of second pillar-related expenses. These discussions should be taken into account.

The Danish and French delegations suggested studying various alternative models in more detail.

The Committee invited the group to study alternative solutions based on the second option.

V. OTHER ISSUES

The Spanish delegation stressed that two other major issues require more in depth examination :

- the working languages of Europol (article 30);
- the territorial scope of the Convention (article 42 a)).

Proposal from the Netherlands delegation regarding the draft Convention on the establishment of Europol (8074/94 EUROPOL 64)

A. After "the Council" in the second sentence of Article 22(8) (joint supervisory body) add: the European Parliament.

B. Article 31 (Parliamentary control) should read as follows:

1. Without prejudice to Article K.6 of the Treaty on European Union:

(a) the European Parliament shall have the right to be consulted by the Council on questions relating to:

- the establishment and operation of Europol;
- co-operation between the Member States in preventing and combating terrorism, unlawful drug trafficking and other forms of international organized crime;
- approximation of legislation in this field among the Member States;

(b) the Council shall submit an annual report to the European Parliament on the questions referred to under (a);

(c) the Council shall consult the European Parliament on proposals for Decisions of a general nature concerning the implementation of this Convention;

(d) the Council may consult the European Parliament on other questions of general relevance.

2. Where the European Parliament deliberates on matters relating to this Convention:

(a) the Council representative attending the meetings may, in addition to assistance from the General Secretariat of the Council, be assisted by other advisors appointed by him;

(b) at the request of the Council representative the deliberations and votes shall take place in camera.