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REPORT.

from : Steering Group II and III

to : K.4 Committee

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9931/2/94 ENFOPOL 134 REV 2

Subject: Illegal trade in nuclear substances

- Report on the situation throughout the European Union for
the European Council (9-10 December 1994)

I. At the meeting of the General Affairs Council on
4/5 October 1994 competent bodies of the third Pillar of the
European Union have been invited to prepare a report on illegal
trade in nuclear and radioactive substances for the European
Council in Essen (9-10 December 1994).

As regards matters covered by

- Steering Group II, reports were elaborated by the Group
"Drugs and Organised Crime" and the group "Customs
Cooperation" (Cf. doc. 9931/2/94 ENFOPOL 134 REV 2 point
2.5.2 and document 10253/94 ENFOCUSTOM 39).
- Steering Group III, the report set out in Annex III was
drawn up on the basis of the proceedings of the Working
Party on "International Organized Crime" and in Steering
Group III (Criminal law).

II. At the meeting of Steering Group II on 3/4 November 1994 it was agreed to submit to the K.4 Committee :

- the report resulting from the work of the Working Group on "Drugs and Organised Crime" in Annex I. It has been stressed that the possibilities for actions outlined in this report are orientations of the German Presidency ;
- the report of the Customs Cooperation Group on which consensus was obtained.

III. The K.4 Committee is invited to confirm the agreement of the Steering Group II as well as the conclusions of the work of Steering Group III in view of the preparation of the examination of this matter by the Council.

Report prepared by the Group "Drugs and Organized Crime" and amended by the Steering Group II on combatting illegal traffic in connection with radioactive and nuclear substances.

- A) In the light of the preparation and the follow-up of the Conference on Drugs and Organized Crime with the associated Central and East-European countries on 8 September 1994 in Berlin, the German Presidency has submitted doc. 7861/94 ENFOPOL 82 to the Working Group "Drugs and Organized Crime. This report contains a situation assessment from the German point of view and first proposals for possible action to solve the problem of illegal traffic of nuclear and radioactive substances. In order to comply with the request of the European Council, a questionnaire was prepared to obtain information on the situation in the individual Member States.

On the basis of the replies received and on the basis of the legal and institutional framework-provisions a report on the situation and the need for action to combat nuclear crime within the European Union will be prepared. The German Presidency has volunteered to complete the evaluation of the questionnaire, if need be also beyond its term of office and, on the basis of the preliminary situation assessment foresees the following possibilities for action, which will have to be examined in greater detail :

- In view of the number of incidents and the first seizure of weapons-grade nuclear material, the Group will focus on this problem.
- Combatting nuclear crime should definitely become a task of Europol.

- All Member States should ensure a form of national coordination relating combatting nuclear crime in connection with structures provided for by existing international agreements (e.g. the conventions of New York and Vienna 1987).
- It appears necessary to establish a European database which is to keep a register on radioactive and nuclear substances as well as a list of competencies and availability of relevant national agencies, contacts and experts.
- The establishment of a European assessment and emergency team under the auspices of EURATOM should be considered.
- The EU advocates the intensification of bilateral contacts between Member States and of the contacts through Interpol with the countries of Central and East Europe and the successor states of the former Soviet Union in the field of nuclear crime.
- Member States should use the standardized reporting system "ECO-report" adopted at the 63th Interpol General Assembly (Rome, 28 September - 04 October 1994) systematically for all cases of illegal traffic in radioactive and nuclear substances.

REPORT ELABORATED BY CUSTOMS COOPERATION GROUP

PART A : Existing measures and short-term measures

1. Agreements with third countries

The threat to the European Union's external borders could be reduced if agreements were reached with countries of origin regarding export checks to be carried out there. In particular, checks should be stepped up and made more effective, and there should be more exchange of information in this area. The Commission should see how far it would be possible to base such agreements on the Association and Partnership Agreements (mixed Agreements) which have been concluded by the European Community and the Member States with most of the central and eastern European countries and which contain protocols on mutual assistance in customs matters. The Commission should take the necessary steps, in conjunction with the Member States.

2. Convention on the Customs Information System and the Mail-System SCENT

The database provided for in the Convention between the Member States of the European Union concerning the use of information technology for customs purposes (CIS Convention) would also be a useful instrument in combating illegal trade in nuclear substances. Suspect consignments or persons could be recorded in the database, making it easier to target checks at external borders.

It is therefore a matter of urgent necessity that the Convention, which is currently under discussion in Coreper, should finally be concluded.

The Customs Information System would be a reasonable complement to the already since many years existing Mail-System SCENT in which the customs posts exchange information directly (there are about 250 terminals). For already a long time SCENT is used to speed up the exchange of information between the customs administrations, including the Commission in order to combat all forms of smuggling.

3. Training

As regards training, attention should be drawn to the possibilities offered at European Community level (first pillar) by the MATTHAEUS (CUSTOMS) programme. Customs authorities have been very satisfied with this programme, and we should examine whether it might be useful to base a similar programme for customs cooperation under Title VI of the TEU on the excellent experiences already made.

PART B : Long-term measures

However, all this does not add up to a satisfactory solution to the problem of nuclear smuggling. Now that checks at internal borders have been discontinued, responsibility for preventing all illegal trafficking in goods, including in nuclear substances lies mainly with those Member States with long external frontiers. Therefore all European Union Member States and the Commission agree on an urgent need of closer cooperation and mutual assistance.

1. External frontiers strategy

As instructed by the Council (Justice and Home Affairs) on 29 and 30 November 1993, the Group is engaged in preparing an action plan for the External Frontiers strategy.

- (a) To this end it has already prepared a questionnaire on technical aids, training and intelligence and risk profiling. That questionnaire has now been supplemented, through 9684/94 ENFOCUSTOM 33, by questions on the availability of dosimeters and clothing to protect against contamination. In the light of the results of an analysis of risk and cost/benefit and of the relevant mode of transport (road/rail/air/water) a recommendation will be made with specific indications of the type and extent of equipment required for the customs posts involved.
- (b) Most Member States have already taken counter-measures against the smuggling of sensitive goods in general, which also could **be used** to fight against illegal trade in nuclear substances. So the main aim here would be to make effective use of already existing structures.

As regards intelligence and risk profiling, a central unit must be set up in each Member State to establish and run the Customs Information System referred to under part A 2. This central unit will operate round the clock to collect, coordinate and forward information, if necessary with a special intelligence division to evaluate and compare new information with existing data. We could easily extend the task to controlling illegal nuclear trade.

Consideration should be given to extending the existing network of customs liaison officers and greater use should be made of the existing structures for gathering and forwarding intelligence.

To this end existing agreements with airlines and marine freight organizations should be extended or new ones concluded, so that freight registers and passenger lists can be made use of.

- (c) Cooperation with other law-enforcement authorities (e.g. the police could be intensified, for example as regards intelligence gathering and evaluation.

2. Review of mutual assistance between customs authorities (Naples II)

In order to improve and extend existing mutual assistance arrangements a draft has already been submitted under the German Presidency for a new convention between European Union Member States on mutual assistance and cooperation between customs authorities in the internal market (Naples II). Title IV of this draft proposes for new forms of cooperation which go beyond traditional mutual assistance. These could be particularly useful in the prevention, investigation and prosecution of infringements in connection with illegal trade in nuclear substances. Matters under consideration include:

- Right of hot pursuit

As the law stands at present, pursuit must stop at the border of a neighbouring Member State. The draft now contains a provision aimed at providing for the possibility of cross-border pursuit.

- Undercover operations

This is particularly necessary where investigations using undercover agents and informants have already taken place in a Member State, and criminal(s) transfer some of their activities to other Member States.

- Joint task forces

This would be particularly appropriate in cases in which specific investigations are being conducted into the activities of criminals in a number of Member States, or where joint targeted-measures are implemented over a given period of time (e.g. air or sea surveillance measures to combat smuggling by aeroplane or ship).

In addition, the draft convention proposes a search file. This would be a EU-wide collection of so-called "soft" data, available to help customs authorities with intelligence on actual investigation into infringements.

Discussions on the basis of the above mentioned draft have just **started** on expert level. The draft will be submitted to the Council in due time according to the procedure provided for and respecting the competencies of the national parliaments.

- à la lumière des travaux du groupe Directeur II, qui aura l'occasion de préciser les substances radioactives et les matières nucléaires qui font l'objet d'un vol et d'un trafic illicite, il y aura lieu de vérifier au sein du Groupe Directeur III si et dans quelle mesure des solutions devraient être envisagées pour faire face à la question. A cet effet, il sera tenu compte des travaux réalisés au sein du Conseil de l'Europe, effectués dans le cadre du Comité d'experts qui traite les aspects concernant la protection de l'environnement par le biais de mesures de droit pénal.
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TRAVAUX DANS LE CADRE DE LA COOPERATION JUDICIAIRE
(MATIERES PENALES)

Le Comité K.4 a demandé d'examiner si, au cas où l'on constaterait des différences substantielles dans le traitement pénal du trafic illicite de substances radioactives et de matières nucléaires entre les Etats membres qui affaiblissent les possibilités de lutte des Etats membres de l'Union, une réflexion pourrait être menée dans le cadre du Titre VI afin d'identifier une possible action de l'Union.

Cette question a été examinée au sein du Groupe "Criminalité organisée internationale" et du groupe Directeur III. Afin de faciliter les travaux, la Présidence a lancé un questionnaire pour faire le point de la situation au niveau national.

A la lumière des travaux réalisés, une première évaluation a été effectuée, selon laquelle :

- tous les Etats membres ont signé et mis en application la Convention sur la protection physique des matières nucléaires, ouverte à la signature le 3 mars 1980 ;
- à l'heure actuelle, certains Etats Membres seulement semblent disposer de règles pénales portant sur des matières qui sont au delà de celles évoquées dans la Convention sur la protection physique des matières nucléaires ;

- à la lumière des travaux du groupe Directeur II, qui aura l'occasion de préciser les substances radioactives et les matières nucléaires qui font l'objet d'un vol et d'un trafic illicite, il y aura lieu de vérifier au sein du Groupe Directeur III si et dans quelle mesure des solutions devraient être envisagées pour faire face à la question. A cet effet, il sera tenu compte des travaux réalisés au sein du Conseil de l'Europe, effectués dans le cadre du Comité d'experts qui traite les aspects concernant la protection de l'environnement par le biais de mesures de droit pénal.
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