

SEMDOC

Statewatch European Documentation &
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10240/94

RESTREINT

CK4 83

OUTCOME OF PROCEEDINGS

of : K.4 Committee

on : 12 and 13 October 1994

Subject: Draft Convention on the establishment of Europol, in particular

- Parliamentary control
- auditing of accounts
- legal remedies

The Committee discussed the aforementioned questions on the basis of
doc. 9842/94 CK4.77 and corrigendum.

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A. Discussion of texts in doc. CK4.77 AND COR. 1

1. Parliamentary control (Article 31).

In regard to the presidency proposal on page 2 of document 9042/94 CK4 77 several delegations felt that the drafting was too cumbersome. The French delegation opposed paragraph 2 of the text.

In view of reaching a compromise the Presidency proposed to delete paragraphs 2, 3 and 4 of its text (see doc. CK4 82 Annex I). The Netherlands delegation suggested an alternative text (see doc. CK4 82 Annex II) emphasizing that its approach merely implements the provision of Article K6.

The Belgian delegation supported the paragraphs 2 and 3 in the presidency's new proposal and paragraph 1 of the suggestion of the Netherlands delegation.

The presidency concluded that its new suggestion had been well received by a majority of delegations. The approach of the Netherlands delegation had also been appreciated especially by the Belgian delegation. It invited delegations most concerned to pursue their common reflections under the auspices of the Presidency.

2. Auditing of accounts (Article 33)

The presidency presented two alternatives for auditing in doc. 9042/94 CK4 77 p. 3.

The Belgian, Greek, Italian and Netherlands delegations strongly emphasized the need to confer the auditing of the accounts of Europol to the Court of Auditors of the European Communities.

The Danish and Spanish delegations said they could accept auditing by the Court of Auditors of the European Communities as well as auditing by a joint audit committee composed of three auditors from the courts of the Auditors of the Member States.

The French and United Kingdom delegations favoured the Troika solution.

The delegation of the United Kingdom noted that its stand on this issue is of lesser depth than that on the role of the Court of Justice of the European Communities.

3. Article 37. Legal remedies

Proposal of presidency in doc. CK4 77 + Cor. 1.

(a) Differences of opinion between Member States or between Member States and Europol.

The Committee discussed the three alternatives in document 9042/94 CK4 77 p. 5. The delegation of the United Kingdom doubted whether specific procedures should be created for the settlement of disputes between Member States or between Member States and Europol. The Council is the right place to discuss disputes. It opposed conferring of jurisdiction to the European Court of Justice. This could create a dangerous precedent. Settlement of disputes in the Council by a $2/3$ majority causes considerable problems. It could work on the proposal to create an arbitration tribunal. It stressed however that there is no need for such a body. Differences of opinion won't be numerous in case of a well drafted and implemented convention with appropriate checks and balances. In case the system, against any expectation doesn't work the whole question can be reconsidered.

The French delegation emphasized that in the intergovernmental framework of cooperation of Europol there is no place for the European Court of Justice. The Council has to sort out differences by unanimity. In case the Council cannot reach agreement after six months the Council can prepare solutions. It looked favorably on the possible creation of an Arbitration Court.

The Spanish delegation supported the approach of the beforementioned delegations. Disputes have to be settled in the framework of the Council.

On the other side the Belgian, Greek, Luxembourg, Netherlands and Portuguese delegations insisted on the necessity to confer jurisdiction to the European Court of Justice. Most of them felt that the European Court of Justice should have a horizontal function in the new institutional framework. The German, Irish, Italian and Austrian delegations preferred Article 37, par. 1 but could accept alternative solutions.

(b) Legal recourse for individuals

The suggestion of the presidency in doc. CK4 77 PAGE 6 AND COR. 1 provides that individual persons can bring infringement of proceedings of his rights before the court competent under national or a comparable independent examining body in any Member State. Such a court or comparable independent body may submit the question to the Court of Justice of the European Communities for a ruling. However each Member State can declare that it will not apply during a period of three years all or a part of Article 37 paragraph 4.

The Belgian, Greek, Irish, Italian, Netherlands and Portuguese delegations favoured the suggestion of the presidency, it being understood that no opting out would be possible. The Spanish and Austrian delegations supported the approach of the Presidency.

The delegations of France and the United Kingdom were opposed to a role of the Court of Justice in this field.

The Danish, Norwegian, Finnish and Swedish delegations declared that they could accept any solution.

(c) Disputes between Europol and its employees.

The French and United Kingdom delegations were of the view that any dispute arising from application of the staff regulations or implementation of the employment contracts should be settled pursuant to the staff regulations. According to the French delegation those regulations have to be agreed upon by the Council.

The Belgian, Danish, Greek, Spanish, Irish, Italian, Luxembourg and Portuguese delegations could accept that the Court of Justice of the European Communities shall have jurisdiction in all disputes between Europol and its employees. The Italian delegation wouldn't oppose settlements pursuant to the staff regulations.

The delegations from acceding states stated they could support both alternatives.

B. Observations of the representative of the Commission.

The representative of the Commission noted that on various occasions during the discussion on the Convention on Europol the concept "intergovernmental" had been used.

He stressed that in the opinion of his Institution this term, even if a convenient shorthand to distinguish the Third Pillar from the First, was inappropriate and misleading if it was used to convey the impression that nothing had changed institutionally with the entry into force of the Treaty on European Union.

The creation of Europol is a matter of common interest provided for in Article K.1.9 of the Treaty on European Union and the Convention under discussion was based on a Treaty Article K.3.2.c. Title VI of the Treaty provided for roles for the Council (passim), the Commission (e.g. Article K4), the European Parliament (e.g. Article K.6) and, potentially, the Court of Justice (Article K.3.2.). The Secretariat of activities covered by the Title VI was performed by the Secretariat of the Council.

All these elements make clear that the Convention was being negotiated in a framework for which the traditional concept of intergovernmentalism did not apply.

C. Compromise proposal

On the basis of aforementioned discussions the presidency presented a compromise text that is in document CK4 82 Annex III on legal recourse.

The Committee welcomed the effort of the presidency.

In a preliminary debate the Danish delegation stated that it could agree on this new text. The Belgian and Netherlands delegations emphasized the necessity of conferring a larger role to the Court of Justice of the European Communities. It should be provided in the text of the Convention that the Court of Justice should settle disputes between Europol and its employees.

The Committee agreed to pursue the reflection on those proposals at its next meeting.

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COR 2 (en)
RESTREINT

CK4 83

CORRIGENDUM

of document 10240/94 CK4 83

Subject: Outcome of proceedings of meeting of K.4 Committee on
12/13 October 1994
- Auditing of accounts

At page 3 of the document 10240/94 CK4 83, the third indent has
to be read as follows :

*"The delegation of the United Kingdom noted that, while this
issue might be of lesser depth than that of the role of the
Court of Justice of the European Communities, this was another
instance where the involvement of a Community Institution was
inappropriate."*

10240/94

COR 1 (en)
RESTREINT

CK 4 83

CORRIGENDUM

of document 10240/94 CK 4 83

Subject: Outcome of proceedings of meeting of K4 Committee on
12/13 October 1994
- Parliamentary control Europol

At page 2 of document 10240/94 CK4 83 the second indent has to be
read as follows:

"The Belgian delegation supported the paragraphs 2 and 3 in
the Presidency's new proposal and paragraph 1 of the
suggestion of the Netherlands delegation. The Commission
supported the approach and the reasoning underlying the
alternative text circulated by the Netherlands
delegation."

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