

SEMDOC

Statewatch European Documentation &
Monitoring Centre on justice and home
affairs in the European Union

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NOTE

from : Presidency

to : K.4 Committee

Subject: Joint action concerning the Europol Drugs Unit

1. The K.4 Committee discussed a draft Council Decision on joint action concerning the Europol Drugs Unit at its meeting on 19 and 20 December 1994.
2. On the basis of the Committee's discussions the Presidency is submitting the draft Decision given in Annex I. Annex II contains the draft declarations by the Ministers for Justice and Home Affairs and by the Council of the Union on the termination of the Europol Drugs Unit's activities.

DRAFT
COUNCIL DECISION
of
on joint action concerning
the Europol Drugs Unit

THE COUNCIL OF THE EUROPEAN UNION,

HAVING REGARD to Article K.3(2)(b) of the Treaty on European Union,

HAVING REGARD to the initiative of the Federal Republic of Germany,

WHEREAS the Member States consider as a matter of common interest the establishment of the Europol Drugs Unit in accordance with Article K.1(9) of the Treaty on European Union;

WHEREAS at its meeting in Luxembourg on 28 and 29 June 1991 the European Council noted proposals for the establishment of a European Police Office (Europol), agreed on the objectives underlying these proposals and recommended that they be examined further;

WHEREAS in the report they submitted to the European Council on 4 December 1991 the Ministers unanimously agreed on the establishment of Europol, beginning with a drugs intelligence unit which would then be developed in the near future;

WHEREAS at its meeting in Maastricht on 9 and 10 December 1991 the European Council agreed on the creation of a European Police Office (Europol), the initial function of which would be to organize the exchange of information on narcotic drugs between the Community's Member States and instructed the Ministers to take such measures as were needed to set up Europol at an early date;

WHEREAS at its meeting in Lisbon on 26 and 27 June 1992 the European Council recommended that the Convention necessary for the establishment of Europol be drawn up;

WHEREAS Member States need to cooperate in an appropriate structure before the entry into force of such a Convention;

WHEREAS in view of the urgent need to deal with the problems posed by international illicit drug trafficking, associated money laundering and organized crime, the Ministers recommended at their special meeting on 18 September 1992 that Europol's first phase, the Europol Drugs Unit (EDU), be in place by 1 January 1993 at the latest;

WHEREAS by common agreement the Representatives of the Governments of the Member States, meeting at Head of State and Government level, decided on the location of the seats of certain bodies and departments of the European Communities and of Europol, according to which Europol and the EDU were to have their seat in The Hague;

WHEREAS the Member States of the European Union already have a framework for cooperation in the form of the EDU, established by ministerial agreement of 2 June 1993 concerning the setting up of the Europol Drugs Unit and which has been operational since January 1994;

WHEREAS the European Council decided at its meeting on 9 and 10 December 1994 in Essen to extend the mandate of the EDU to the fight against illegal trade in radioactive and nuclear materials, crimes involving illegal immigration networks, vehicle trafficking and associated money-laundering operations;

WHEREAS in the conclusions of the European Council of 9 and 10 December 1994 it was decided that the Convention on the establishment of Europol should be concluded at the latest by the European Council in Cannes; whereas there is the will to undertake all the measures necessary to achieve this aim,

HAS DECIDED AS FOLLOWS:

Article 1

The following rules shall apply to the Europol Drugs Unit.

Article 2

Objectives and scope

- (a) Each Member State shall send one or more liaison officers to The Hague in order to constitute, with the liaison officers of the other Member States, a team which will cooperate within the unit known as the Europol Drugs Unit.
- (b) This Unit shall act as a non-operational team for the exchange and analysis of information and intelligence, as soon as they affect two or more Member States, in relation to:
- (i) illicit drug trafficking,
 - (ii) illegal trade in radioactive and nuclear substances,
 - (iii) crimes involving illegal immigration networks,
 - (iv) vehicle trafficking
- as well as
- the criminal organizations involved and associated money-laundering activities.
- (c) The objective of the Unit is to help the police and other law enforcement agencies within and between Member States to combat the abovementioned criminal activities more effectively.

For this purpose, members of the Unit shall perform, in compliance with their national laws and any instructions given by their Member States, the following tasks:

- (i) exchange of information (including personal information) between Member States in furtherance of specific criminal investigations concerning the criminal activities mentioned under (b);
- (ii) preparation of general situation reports and analyses of criminal activities on the basis of non-personal information supplied by Member States and from other sources.

The activities of the Unit shall be without prejudice to other forms of bilateral and multilateral cooperation in combating the criminal activities listed under (b), or to the competences of the European Communities.

Article 3

Data processing

With regard to the criminal activities listed in Article 2(b), the liaison officers shall communicate, within the limits of their national laws, other legal rules and any instructions given by their Member States, information in furtherance of specific criminal investigations concerning violations in connection with these criminal activities, the development of intelligence as well as strategic analysis. In order to fulfil these tasks, the liaison officers shall have access to all relevant national criminal information and intelligence. The prohibition of unauthorized access to information and the protection against destruction, including ensuring the physical protection of data-processing systems and links, shall be ensured.

Requests for information made to the Unit by the police or any other authorized law enforcement agencies shall be channelled through one or a limited number of national central authorities. The latter shall also be responsible for the receipt and the passing on of any replies from the Unit.

Article 4

Data Protection

- (a) Personal information shall be communicated on the basis of exchanges between the liaison officers, each of them acting in accordance with the provisions of his national law, and with any other relevant legal rules and ministerial instructions concerning the processing of personal information, in compliance with all the conditions imposed by the delivering States in respect of the use of such information. Any exchange of information between the requesting and the delivering State shall take place solely on a bilateral basis via their respective liaison officers. Should the delivering State, in the course of dealing with a request, discover any information in connection with a criminal activity listed under Article 2(b), this information may be made available to the State in question via the liaison officers of the States involved in accordance with their respective national legislation.
- (b) The liaison officers will not transmit any personal information to non-Member States or to any international organization.

To the extent required by their national legislation on data protection, the liaison officers shall keep a record – exclusively for the purposes of data protection – of the personal information they have transmitted, as described above. Furthermore, no personal information will be stored centrally, whether automatically or otherwise, by the Unit.

- (c) The data-protection authorities of the Member States shall ensure that the activities of the liaison officers seconded by their Member States comply with national legislation on the protection of personal data. The national data-protection authorities shall check that the Unit's common database (if any) contains only non-personal data.

In order to enable the liaison officers to fulfil the above requirements, Member States shall undertake to ensure that their liaison officers cooperate fully with their respective national data-protection authorities.

Article 5

Staffing

The Unit shall be headed by a Coordinator. In addition to the Coordinator, the management team shall consist of two Assistant Coordinators and of not more than two members occupying posts on a level below that of the Assistant Coordinators and having a direct hierarchical link to the Coordinator as well as a limited scope of activities. The appointment of the Coordinator, the two Assistant Coordinators and the other two members of the team shall be agreed by the Council after consultation of the competent bodies in accordance with Title VI of the Treaty on European Union. The management team shall be responsible for the day-to-day operation of the Unit. The Member States shall instruct their liaison officers to follow the instructions of the Coordinator, within the limits of their national legislation, any other legal rules and their instructions.

Apart from the liaison officers sent directly by Member States, other staff shall be posted to the Unit in such numbers as may be agreed by the Council. The coordinator of the Unit shall be involved in the appointment of such staff.

Article 6

Accountability

Without prejudice to the responsibility of each Member State for supervising its national liaison officers, the Council shall exercise general oversight over the activities of the Unit. For this purpose, the Coordinator shall submit a six-monthly written report on his management and the activities of the Unit. The Coordinator shall also provide any other report or information the Council may ask for.

Article 7

Finance

The Member States shall bear the cost of sending their liaison officers as well as of the necessary equipment for the Unit to the Unit. Other costs of establishing and maintaining the Unit, initially met by the host country, shall be defrayed jointly by the Member States. Each Member State's annual contribution for this purpose shall be determined on the basis of its gross national product (GNP), according to the scale used for determining the GNP element of the own resources financing the budget of the European Communities.

Each year the GNP of each Member State for the previous year shall be the reference basis used.

Article 8

Entry into force

This Decision shall enter into force on the day of its publication in the Official Journal. It replaces the Ministerial Agreement of 2 June 1993 on the establishment of the Europol Drugs Unit.

Done at

For the Council
The President

DRAFT STATEMENTS

for entry in the Council minutes

Declaration by the Ministers for Justice and Home Affairs

"The Ministers for Justice and Home Affairs, meeting on, agreed that the Ministerial Agreement on the establishment of the Europol Drugs Unit, signed in Copenhagen on 2 June 1993, will cease to have effect on the date on which the Council Decision on joint action concerning the Europol Drugs Unit (EDU) enters into force. They request the Council of the European Union to confirm that the decisions taken regarding staffing, operation and finance of the EDU will continue to have effect for the period agreed when they were adopted."

Declaration by the Council of the Union

"The Council of the Union:

- notes the conclusions of the meeting of the Ministers for Justice and Home Affairs on on the fact that the Ministerial Agreement on the establishment of the Europol Drugs Unit will cease to have effect on the date of entry into force of the Council Decision on joint action concerning the Europol Drugs Unit adopted today;*
- has decided that the decisions taken by the Ministers on the staffing, operation and finance of the Europol Drugs Unit will have effect for the period agreed when they were adopted."*
