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RESTREINT

EUROPOL 16

NOTE

from: Presidency

to : Europol Working Party

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Subject: **Draft Convention on the establishment of Europol**
- Right to information: exercise and follow-up

In preparation for the meeting of the Europol Working Party on 20 February 1995, delegations will find attached a Presidency proposal regarding the right to information, its exercise and follow-up.

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At its meeting on 1 and 2 February 1995, Steering Group II examined the Presidency's proposal regarding the right of access, its exercise and follow-up.

The Presidency would reiterate the advantages of its compromise:

- * a single window to which any individual may apply (in Europol);
- * the lowest common denominator allowing for compliance with different national laws.

The Presidency takes the view that no Member State should be obliged to amend its national laws.

Nine delegations indicated their agreement in principle to the Presidency's text.

Four delegations entered scrutiny reservations.

The German and Netherlands delegations favoured the direct access arrangements set out in Article 17 of 10324/2/94.

At the Working Party meeting, Finland withdrew its scrutiny reservation on the Presidency's proposal.

The Europol Working Party's discussions on 8 and 9 February also enabled the Presidency's text concerning correction and deletion of data in data files to be improved and expanded.

Further details have thus been included concerning:

- * the origin and different forms of incorrect data;
- * correction of errors;
- * the liability of Member States and Europol.

In the circumstances, the attached Presidency text could be agreed in principle by the Europol Working Party on 20 February 1995 and be submitted to Steering Group II on 21 February and to the K.4 Committee on 22 February for approval by the JHA Council on 10 March.

RIGHT TO INFORMATION: EXERCISE AND FOLLOW-UP

PRESIDENCY PROPOSAL

RIGHT OF ACCESS

1. Each individual shall be entitled to apply free of charge to the joint supervisory body referred to in Article 22 requesting it to check that any storage, collection, processing and utilization by Europol of data concerning him has been legitimately and correctly carried out.
2. The application shall be dealt with within three months of receipt by the joint supervisory body. The latter shall check any information concerning the applicant communicated to Europol by third countries or third organizations or resulting from Europol's analysis activity. Where information regarding the applicant has been communicated by Member States, the joint supervisory body shall approach the national supervisory bodies concerned requesting that they make the necessary checks in accordance with national law: the national supervisory bodies shall communicate their findings to the joint supervisory body.
3. Europol shall provide the joint supervisory body with all information necessary to deal with the applicant's request.
4. The joint supervisory body's reply to the applicant shall state that all the necessary checks have been made but shall divulge nothing which could indicate to the applicant whether or not he is known to Europol.

The joint supervisory body shall further inform the applicant that he may also apply to the competent authorities under national law in each Member State, without specifying whether any Member States have actually communicated data concerning him to Europol.

5. Where the applicant applies to the competent authority of a Member State, that authority may reply only in respect of data communicated to Europol by that Member State, excluding any data originating in Europol.

CORRECTION AND DELETION OF DATA IN DATA FILES

1. If it emerges that data held by Europol, communicated to it by third countries or third organizations or resulting from its own analysis activity, are incorrect or that their input or storage contravenes this Convention, Europol shall correct or delete such data.
2. **If incorrect data or data contravening this Convention are communicated by Member States to Europol, Member States shall be obliged to correct or delete such data in consultation with Europol. Should errors in the data occur as a result of their input or storage by Europol, such data shall be corrected by Europol in consultation with Member States.**
3. In either case the recipient Member State(s) shall be informed without delay. The latter shall also correct or delete such data.

LIABILITY FOR UNAUTHORIZED OR INCORRECT DATA PROCESSING

1. Each Member State shall be liable, in accordance with its national law, for any injury caused to a person which arises from incorrect or unauthorized data held or processed by Europol. The injured party may claim compensation only against the Member State where the injury was sustained, by applying to the competent courts under national law.
2. If the incorrect or unauthorized data result from errors in the communication of data by a Member State or incorrect or unauthorized storage or processing by Europol, Europol or that Member State shall be bound, if so requested, to reimburse the sums paid in compensation, unless the data have been used in contravention of this Convention by the Member State on whose territory the injury was caused.
3. Any disagreement between that Member State and Europol or another Member State on the principle or the amount of reimbursement shall be submitted to the Management Board and if necessary to the Council.