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LIMITE

ENFOPOL 98

N O T E

from: French delegation

to : Police Cooperation Working Party

Subject: Interception of telecommunications
– Summary of replies to questionnaire 4584/95 ENFOPOL 19 on the integration of the Council Resolution of 17 January 1995 on the interception of telecommunications into national law

Resolution 9529/95 ENFOPOL 90 (former reference ENFOPOL 150 and 7380/1/95 ENFOPOL 46 REV 1) on the requirements of law enforcement agencies relating to the lawful interception of communications was adopted by written procedure on 17 January 1995. Each Member State must now integrate it into its domestic law.

At the meeting of the Police Cooperation Working Party (Interception of Telecommunications) on 19 January 1995 (4584/95 ENFOPOL 19 point 2), it was decided to examine the impact of such integration to enable Member States to exchange information, to record the problems raised and to propose solutions.

The questionnaire covered several aspects:

1. the regulatory aspect
2. relations with the national telecommunications sector
3. relations with standards bodies

Thirteen Member States replied to the questionnaire.

1. THE REGULATORY ASPECT

1.1. National structures for the implementation and monitoring of the requirements contained in the Resolution.

There was a certain similarity between the structures in the Member States in this area since the national bodies responsible were generally the following:

- either the ministry responsible for supervising telecommunications (Finland, Germany, France),
- or the Ministry for Justice (Ireland),
- or these ministries jointly (Luxembourg, Denmark, Netherlands and Italy), sometimes in association with special services (Greece).

In the United Kingdom, implementation of the Resolution is monitored by an inter-ministerial committee of senior officials, the composition of which was not specified.

Belgium has still not designated a competent national authority.

1.2. Procedures for integrating the resolution

Resolution ENFOPOL 90 gives rise to legislative and regulatory problems for some Member States leading to a delay in integration.

The requirements imposed for the interception of digital communications necessitate **a fundamental reform of telecommunications law** in most of the Member States which replied to the questionnaire (Austria, Luxembourg, Netherlands, Finland, Denmark and Sweden). Ad hoc committees have been set up in Denmark, Austria, Luxembourg and Finland, which will give their conclusions in the course of the year.

Member States may be divided into three groups:

(1) States where current legislation does not satisfy the requirements of the Resolution: Austria, Luxembourg, Finland, Greece and Sweden,

(2) States where current legislation is compatible (Netherlands, Denmark), or already provided for similar obligations (Germany, France, Ireland, Greece),

(3) States where there will be supplementary provisions in the legislation (Netherlands, Belgium) or where integration is the subject of negotiations in a working party of representatives of the supervisory authorities and the network operators (Ireland).

At the end of 1995, Italy began exploring the legal and technical questions associated with integrating the Resolution. The legal experts of the Administrations in question (Posts and Telecommunications: Justice and Home Affairs) are now assessing, in ad hoc meetings, the steps to be taken in the legislative sphere (laws, regulations, conventions or protocols of understanding with service providers). The technical experts of the Governments concerned were asked to consider aspects relating to new technologies. As soon as possible, the Ministry of Posts and Telecommunications will hold informal talks with service providers.

1.3. Publication of the Resolution

In most Member States the Resolution was simply forwarded to the responsible authorities without formal publication (e.g. publication in the Official Journal).

In the United Kingdom notice of the Resolution has to be given to Parliament but public operators have already been informed.

There has been no specific publication in Belgium.

1.4. Implementation of the requirements

Implementation is in hand in France, Netherlands and Germany. In Germany, the operators have stated that the requirements for mobile telecommunications will essentially be met in 1996. Most of the requirements are implemented in Denmark while the main operators in the United Kingdom have already implemented them(other operators have introduced provisional technical solutions). The law in Greece does not yet lay down the technical means to enable interception to take place.

In Luxembourg and Finland the questions pending before the ad hoc committees responsible for legislative scrutiny.

In Ireland, negotiations are in hand exclusively for GSM and future technologies (see point 1.2.).

2. RELATIONS WITH THE NATIONAL TELECOMMUNICATIONS SECTOR

2.1. Information for and reactions from the telecommunications industry (in particular network operators and service providers)

States in which integration of the Resolution raises no or only minor legislative or regulatory problems were able to inform their national telecommunications sector e.g. Denmark, Netherlands, Finland, Germany, United Kingdom and France. However, it should be noted that:

- such information has not always reached the whole sector,
- the method of approach differs from State to State.

2.1.2. Recipients of information

Germany informed the whole sector. The Netherlands and France informed operators only and the United Kingdom informed public operators only.

In Denmark information was disseminated by the ad hoc committee responsible for examining the procedures for adjusting domestic law. Finland is also awaiting the conclusions of an ad hoc committee and has so far only informed industry of the existence of the Resolution informally and incidentally.

2.1.3. Information methods

In Germany, the telecommunications sector was informed both verbally and in writing. Also, Germany keeps international investors/manufacturers and operators permanently informed with regard to satellite communications systems.

In the United Kingdom the Resolution was distributed to public operators and was also discussed by them with representatives of the Home Office; the Resolution will also be supplemented by additional requirements to be annexed to it.

In Ireland the authorities responsible for informing the sector are now looking into the most adequate method.

2.1.4. Reactions

While the Danish telecommunications sector understood the need for lawful interception of communications, the Greek sector seems to have manifested some misgivings. In the United Kingdom public operators feel that the Resolution will be useful to them in their negotiations with switch manufacturers. In Germany and Finland the telecommunications sector was concerned about the financial burden consequent upon the application of the Resolution.

2.2. Sharing the financial burden (optional question)

It appears that only in the United Kingdom and Germany has the question of the financial burden of interception been resolved. In the United Kingdom operators finance the cost of intercepting the signal while services requiring the interception pay for routing the signal to the reception point. In Germany, the security services, bear the costs involved in carrying out and recording the interceptions measures, and the network operators finance the technical equipment required for surveillance on the network.

The question is being examined in the Netherlands and in Ireland. In the Netherlands, this task has been assigned to an interministerial working party. As regards GSM, it has been decided that operators should finance equipment installed in their infrastructure. In Ireland, the matter will be dealt with by the aforementioned working party.

In Denmark, the question is not yet clear.

Nothing has been decided as yet in Finland.

3. RELATIONS WITH STANDARDS BODIES

The reply to the question whether there is a need to refer to standards authorities was optional. Delegations which did reply are divided.

Denmark, Ireland, the Netherlands, Germany and France differ in their approach to the problem.

Ireland and Denmark are of the opinion that consulting standards bodies could lead to the establishment of standards for future interception systems. The Netherlands stress the importance of such bodies getting involved quickly; moreover, they have already informed ETSI/STAG and intend to bring the Resolution to the attention of international telecommunications organizations.

Germany thinks the involvement of standards bodies is vital. That is why it has finally asked its competent authorities to incorporate the requirements at the level of the relevant standards bodies.

France thinks that it is for each country to bring the matter to the attention of its representatives in standards bodies.

CONCLUSIONS

The integration of the Resolution on the requirements of law enforcement agencies relating to the interception of digital communications is going to cause considerable upheaval to telecommunications legislation in most Member States or require at least partial reform.

The implementation of the Resolution has been completed or is being incorporated in only 5 of the 13 States which replied to the questionnaire.

For the moment, except in Germany only national operators have been informed of the requirements of the Resolution apart from manufacturers and service providers.

The problem of the financial burden of implementing the Resolution has been resolved in only 2 of the 6 States which replied to that question.

Member States consider it necessary for standards bodies to be involved.

PROPOSED WORKING METHOD FOR THE FUTURE

As the process of integrating the Resolution into national law has not yet been completed, the French delegation proposes to keep this impact study up-to-date by adding the following:

1. Progress with the integration of the Resolution in those States where legislative reform is under way,

2. New facts which have emerged since then in other Member States in particular as regards relations with manufacturers and service providers.

In any event, delegations are invited to send any comments for correcting this document, in case their replies have been misinterpreted.

RECOMMENDATIONS

Moreover, the Working Party is invited to adopt the following recommendations:

1. It will continue to keep itself informed on progress with the integration of Resolution ENFOPOL 90 into national laws; this will also apply to supplementary resolutions to be adopted in the future (e.g. following the CANBERRA seminar);

2. It undertakes to consider ways of apprising constructors quickly;

3. Without prejudice to future technological progress and the legal consequences thereof, it will examine all supplementary questions linked to the problem of interception in the framework of Resolution ENFOPOL 90;

4. It seems essential that informal contacts be maintained with third countries given the increasing internationalization of communications.