

EUROPEAN UNION
THE COUNCIL

Brussels, 15 April 1997

5106/8/97

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REV 8
LIMITE

EUROPOL 2

NOTE

from: the Presidency

to: the Europol working group

No. prev. doc. : 5106/5/97 EUROPOL 2 REV 5

Subject: Protocol on privileges and immunities of Europol, the members of its organs and the deputy directors and employees of Europol

Please find herewith a text by the Presidency of aforementioned protocol elaborated on the basis of the work of the group on 14 April 1997.

COUNCIL

COUNCIL ACT

of 1987

drawing up the Protocol based on article K3
of the Treaty on the European Union
and article 41 (3)
of the Europol Convention, on the privileges
and immunities of Europol,
the members of its organs, the Deputy Directors
and employees of Europol

THE COUNCIL OF THE EUROPEAN UNION

Having regard to Article K3 of the Treaty on the European Union and to the Convention based on Article K3 of the Treaty on the European Union, on the establishment of a European Police Office⁽¹⁾ and in particular Article 41(3) thereof,

Considering that Europol, the members of its organs, the Deputy Directors and employees of Europol shall enjoy the privileges and immunities necessary for the performance of their tasks in accordance with a Protocol setting out rules to be applied in all Member States,

Has decided on the drawing up of the Protocol, the text of which is annexed, which has been signed today by the Representatives of the Governments of the Member States of the Union,

RECOMMENDS that it be adopted by the Member States in accordance with their respective constitutional requirements.

Done at Brussels, 1987

For the Council
The President

⁽¹⁾ OJ 1995 C 316/1

PROTOCOL⁽¹⁾

based on Article K3 of the Treaty on the European Union and
Article 41(3) of the Europol Convention,
on the privileges and immunities of Europol,
the members of its organs, the Deputy Directors
and employees of Europol

THE HIGH CONTRACTING PARTIES

to the present Protocol, Member States of the European Union,

REFERRING to the Council Act of 1997

Considering that pursuant to article 41(1) of the Convention based on Article K.3 of the Treaty of the European Union on the establishment of a European Police Office (Europol Convention)⁽¹⁾, Europol, the members of its organs, the Deputy Directors and employees of Europol shall enjoy the privileges and immunities necessary for the performance of their tasks in accordance with a Protocol setting out the rules to be applied in all Member States,

HAVE AGREED AS FOLLOWS:

⁽¹⁾The Spanish delegation has a study reservation on the whole Protocol.
⁽²⁾OJ 1995 C 316/1

Article 1
Definitions

In this Protocol:

- a. "Convention" means the Convention based on Article K.3 of the Treaty of the European Union, on the establishment of an European Police Office (Europol Convention);
- b. "Europol" means the European Police Office;
- c. "organs of Europol" means the Management Board as referred to in article 28 of the Convention, the Financial Controller as referred to in article 35, paragraph 7, of the Convention, and the Financial Committee as referred to in article 36, paragraph 2, of the Convention;
- d. "Board" means the Management Board as referred to in Article 28 of the Convention;
- e. "Director" means the Director of Europol as referred to in Article 29 of the Convention;
- f. "staff" means the Director, Deputy Directors and employees of Europol as referred to Article 30 of the Convention with the exception of the local staff as referred to in Article 3 of the Personnel Statute;
- g. "archives of Europol" means all records, correspondence, documents, manuscripts, computer and media data, photographs, films, video and sound recordings belonging to or held by Europol or any of its staff members, and any other similar material which in unanimous opinion of the Board and of the Director shall form part of the Archive of Europol.

Article 2
Immunity from legal process and
Immunity from search, seizure, requisition, confiscation etc.

1. Europol has immunity from legal process for the liability mentioned in Article 38, paragraph 1 of the Convention for unauthorized or incorrect data processing⁽¹⁾.
2. The property, funds and assets of Europol, wherever located on the territories of the Member States and by whomsoever held, shall be immune from, search, seizure, requisition, confiscation and any other form of interference.

Article 3
Inviolability of archives

The archives of Europol wherever located on the territories of the Member States and by whomsoever held shall be inviolable

Article 4⁽¹⁾
Exemption from taxes and duties

1. Within the scope of its official activities, Europol, its assets, income and other property shall be exempt from all direct taxes.
2. Europol shall be exempt from indirect taxes and duties included in the price of movable and immovable property and services, acquired for its official use and involving considerable expenditure. The exemption may be granted by way of a refund.
- 3... Goods purchased under this Article with exemption from Value Added Tax or excise duties, shall not be sold or otherwise disposed of, except in accordance with the conditions agreed upon with the Member State concerned.

⁽¹⁾The German delegation has a language reservation on this paragraph.

⁽²⁾The French delegation would like paragraph 2 and 3 to be deleted.

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4. No exemption will be granted from taxes and duties which represent charges for specific services rendered.

Article 5

Freedom of financial assets from restrictions

Without being subject to any financial controls, regulations, notification requirements in respect of financial transactions, or moratoria of any kind, Europol may freely:

- a. purchase any currencies through authorised channels, hold and dispose of them;
- b. operate accounts in any currency.

Article 6

Facilities and immunities in respect of communication

1. Member States shall permit Europol to communicate freely and without a need for special permission, for all official purposes, and shall protect the right of Europol to do so. Europol shall have the right to use codes and to dispatch and receive official correspondence and other official communications by courier or in sealed bags which shall be subject to the same privileges and immunities as diplomatic couriers and bags.
2. Europol shall, as far as may be compatible with the International Convention on Telecommunication of 8 November 1982, for its official communications enjoy treatment not less favourable than that accorded by Member States to any other international organisation or government, including diplomatic missions of such other government in the matter of priorities for mails, cables, telegrams, telexes, radiograms, television, telephone, fax, satellite, and other communications.

Article 7
Entry, stay and departure

Member States shall facilitate, if necessary, the entry, stay and departure of the persons listed in Article 8 for purposes of official business. This shall not prevent the requirement of reasonable evidence to establish that persons claiming the treatment provided for, come within the classes described in Article 8.

Article 8⁽¹⁾
**Privileges and immunities of members of
the organs of Europol and staff members of Europol**

1. Members of the organs of Europol and staff members of Europol shall enjoy the following immunities:
 - a. Without prejudice to article 32 and, as far as applicable, article 40 paragraph 3 of the Convention, immunity from legal process of any kind in respect of words spoken or written, and of acts performed by them, in the exercise of their official functions, such immunity to continue notwithstanding that the persons concerned may have ceased to be members of an organ of Europol or staff members of Europol;⁽¹⁾
 - b. Inviolability of all their official papers, documents and other official materials.
2. Staff members of Europol, whose salaries and emoluments are subject to a tax for the benefit of Europol as mentioned in Article 10, shall enjoy exemption from income tax with respect to salaries and emoluments paid by Europol. However, such salaries and emoluments may be taken into account when assessing the amount of tax payable on income from other sources. This paragraph does not apply to pensions and annuities paid to former staff members of Europol and their dependants.

⁽¹⁾The Belgium delegation would like to integrate a paragraph on the residence of staff members for tax purposes, similar to Article 14 of the Protocol on the Privileges and Immunities of the European Communities (67/444/EEC).

⁽¹⁾The German delegation has a study reservation on this paragraph.

Article 9

Exemptions to the immunities as mentioned in article 8

The immunity granted to persons mentioned in Article 8 shall not extend to civil action by a third party for damages, personal injury or death, arising from a traffic accident caused by any such person.

Article 10

Taxes

1. Subject to the conditions and following the procedures laid down by Europol and agreed by the Board, the staff members of Europol engaged for a minimum period of one year, shall be subject to a tax for the benefit of Europol on salaries and emoluments paid by Europol.
2. Each year, Member States shall be notified of the names and addresses of the staff members of Europol mentioned in this Article as well as of any other personnel contracted to work at Europol. Europol shall deliver each of them a yearly certificate bearing the total gross and net amount of remuneration of any kind paid by Europol every year, including the details and nature of payments and the amounts of withholdings at source.
3. This Article does not apply to pensions and annuities paid to former staff members of Europol and their dependants.

Article 11

Protection of personnel

Member States shall - if so requested by the Director - take all reasonable steps in accordance with their national laws to ensure the necessary safety and protection of those persons mentioned in this Protocol whose security is endangered due to their services to Europol.

Article 12⁽¹⁾
Security of the Member States

The provisions of this Protocol shall not prejudice the right of each Member State to take all precautionary measures necessary in the interests of its security.

Article 13
Waiver of Immunities

1. The privileges and immunities granted under the provisions of this Protocol are conferred in the interests of Europol and not for the personal benefit of the individuals themselves. It is the duty of Europol and all persons enjoying such privileges and immunities to observe in all other respects the laws and regulations of Member States.
2. The Director shall be required to waive the immunity of Europol and any staff member of Europol, in cases where the immunity would impede the course of justice and can be waived without prejudice to the interests of Europol. In respect of the Director and the members of the organs, the Board has a similar obligation. In respect of Members of the Board, the waiving of the immunities shall be within the competence of the respective Member States.
3. When the immunity of Europol as mentioned in article 2 paragraph 2 has been waived, searches and seizures ordered by the judicial authorities of the Member States shall be effected in the presence of the Director or a person delegated by him, in compliance with the rules of confidentiality laid down in or by virtue of the Convention.
4. Europol shall co-operate at all times with the appropriate authorities of Member States to facilitate the proper administration of justice and shall prevent any abuse of the privileges and immunities granted under the provisions of this Protocol

⁽¹⁾The French, Swedish, Austrian and Danish delegations have a study reservation on this Article.
The German delegation has a reservation on this Article.

5. Should a competent authority or judicial body of a Member State consider that an abuse of privilege or immunity conferred by this Protocol has occurred, the body responsible for waiving immunity pursuant to paragraph 2 shall, upon request, consult with the appropriate authorities to determine whether any such abuse has occurred. If such consultations fail to achieve a result satisfactory for both sides, the matter shall be settled in accordance with the procedure set out in Article 14.

Article 14⁽¹⁾

Settlement of disputes

1. Disputes between Member-States on a refusal to waive an immunity of Europol or of a person who, by reason of his official position, enjoys immunity as mentioned in Article 1, shall be discussed by the Council in accordance with the procedure set out in Title VI of the Treaty on the European Union with the aim of finding a settlement.
2. When such disputes are not settled, the Council shall unanimously decide on the modalities according to which they shall be settled.

Article 15

Reservations

Reservations shall not be permissible in respect of this Protocol.

Article 16

Entry into force

1. This Protocol shall be subject to adoption by the Member States in accordance with their respective constitutional requirements.
2. Member States shall notify the depositary of the completion of their respective constitutional requirements for adopting this Protocol.

⁽¹⁾The German delegation has a study reservation on this Article: "It should be further examined whether a judicial body (either the European Court of Justice or a high national court) should finally decide on the waiver of immunities. The German delegation considers this question to be inter-connected with the range of immunities under Article 8 paragraph 1."

3. This Protocol shall enter into force on the first day of the second month following the notification, referred to in paragraph 2, by the Member State which, being a member of the European Union on the date of adoption by the Council of the act drawing up this Protocol, is the last to fulfil that formality.

Article 17

Accession

1. This Protocol shall be open to accession by any State that becomes a member of the European Union.
2. The text of this Protocol in the language of the acceding State, drawn up by the Council of the European Union, shall be authentic.
3. The instrument of accession shall be deposited with the depositary.
4. This Protocol shall enter into force with respect to any State that accedes to it, ninety days after the deposit of its instrument of accession, or on the date of the entry into force of this Protocol if the latter has not yet come into force when the said period of ninety days expires.

Article 18

Evaluation

Within two years after the entry into force of this Protocol, it will be evaluated under the supervision of the Management Board.

**Article 19
Amendments**

1. Amendments to this Protocol may be proposed by any Member State, being a high Contracting Party. Any proposal for an amendment shall be sent to the depositary, who shall forward it to the Council.
2. Amendments shall be established unanimously by the Council, which shall recommend that they be adopted by the Member States in accordance with their respective constitutional requirements.
3. Amendments thus established shall enter into force in accordance with the provisions of Article 16.
4. The Secretary-General of the Council of the European Union shall notify all Member States of the date of entry into force of the amendments.

**Article 20
Depositary**

1. The Secretariat-General of the Council of the European Communities shall act as depositary of this Protocol.
2. The depositary shall publish in the Official Journal of the European Communities the notifications, instruments or communications concerning this Protocol.

IN WITNESS WHEREOF, the undersigned Plenipotentiaries have signed this Protocol.

DONE at Brussels, on In a single original, in the Danish, Dutch, English, Finnish, French, German, Greek, Irish, Italian, Portuguese, Spanish and Swedish languages, each text being equally authentic, such original remaining deposited in the archives of the general secretariat of the Council of the European Union.
