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NOTE

from : The Presidency

to: COREPER/COUNCIL

No. prev. doc.: 10019/97 JUST 6

Subject: Rule of law: Follow-up to the Noordwijk Conference

Introduction

1. Under the criteria established by the Copenhagen Council in 1993, stability of institutions guaranteeing, inter alia, democracy, the rule of law and human rights is an explicit requirement of EU membership. Further recognition of the importance of the rule of law as a constitutional principle was given in the Treaty of Amsterdam: the new Article F(1) inserted in the Maastricht Treaty declares that the Union is founded on principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, which are common to the Member States.
2. The applicants and Member States should therefore continue to strengthen national institutions and structures which underpin and guarantee the principle of rule of law. For this purpose, the Presidency believes that some practical guidance on what constitute the main elements of the rule of law could be helpful.

The Noordwijk conference

3. The rule of law was the subject of an important pan-European conference organised by the Dutch Presidency at Noordwijk on 23/24 June 1997. Drawing on a range of sources, including provisions of the European Convention on Human Rights and the jurisprudence of the European Court of Human Rights, together with relevant Council of Europe resolutions and recommendations¹, the conference formulated a set of conclusions covering most of the ground normally regarded as constituting the rule of law, including independence of the judiciary, access of citizens to justice, respect for judicial decisions and an objective public prosecution system.
4. These conclusions have been reproduced in doc. 10019/97 JUST 6. It will be recalled that, during the meeting of the JHA Council with JHA Ministers of the candidate States on 5 December 1997, within the framework of the Structured Dialogue, Ministers emphasised the importance of the rule of law for both Member States and candidate States. The Ministers in that context took note of the conclusions of the Noordwijk Conference.

Follow-up to Noordwijk Conference

5. The Presidency believes that, alongside the JHA acquis, the Noordwijk Conference conclusions, and the sources from which they derive, constitute valuable guidance for the candidate States in the context of the enlargement process on what the principle of the rule of law should in practice be taken to be.
6. The Presidency welcomes the priority attached by the Commission to institution building in its management of the Phare programme and suggests that the Commission might be invited in this context to include in particular projects aimed specifically at reinforcing the rule of law, as defined in the Noordwijk conclusions.

¹ Information about Council of Europe instruments in this area has been submitted to the K4 Committee in document 6737/98 CK4 16.

7. The Presidency considers that there is one additional element which is important in framing a comprehensive operational definition of the rule of law. This is the important role of the police, alongside judicial authorities, in a constitutional state. This gap could be met by drawing on the principles of good policing which have been formulated by the Association of European Police Colleges (AEPC), at the request of the Police Co-operation Working Group. In the view of the Presidency, the framework established by the AEPC for educational support by the EU to the candidate States (document 8243/97 ENFOPOL 118) provides an excellent basis for training of the police, based on the democratic principles of accountability by the police within the framework of the rule of law.

8. The K4 Committee considered draft Council conclusions at its meeting on 27/28 April, and the draft has been amended in the light of that discussion. The German delegation has entered a scrutiny reservation.

Conclusions

9. The Presidency therefore invites the Council to endorse the draft Council conclusions attached and to decide on its publication in the Official Journal of the European Community.

Draft conclusions of the Council concerning the application of the rule of law

1. The Council recalls that, in the opening statement of the European Union for the negotiations on accession of the candidate countries from Central and Eastern Europe and Cyprus, it stated that individual progress in preparing for accession would contribute to the advancement of the negotiations, taking into account (inter alia) the Copenhagen and Madrid criteria, which set down requirements for membership, including the stability of institutions guaranteeing democracy, the rule of law, human rights and respect for, and protection of, minorities.
2. The Council also recalls the conclusions of the structured dialogue of the Ministers of Justice and Home Affairs and the Commission in Brussels on 5 December 1997, which took note of the conclusions of the Conference on the rule of law in a democratic society, which took place in Noordwijk, Netherlands, on 23/24 June 1997¹, and stressed the importance of the rule of law for the Member States and the States applying for accession.
3. The Council notes that the Treaty of Amsterdam (Article O (Article 49 new), in conjunction with Article F, first paragraph (Article 6 new)) will state that candidate States must, inter alia, respect the rule of law as a principle common to all the Member States.
4. Of particular significance in this context are the European Convention on Human Rights, the jurisprudence of the European Court of Human Rights based on these articles and the appropriate Resolutions and Recommendations of the Committee of Ministers of the Council of Europe. The Council notes that the Member States of the European Union and the candidate States from Central and Eastern Europe, including the Baltic states, and Cyprus, have all ratified the European Convention on Human Rights.
5. The Council reaffirms that the conclusions of the Noordwijk Conference contain useful reflections, based on the above sources, on most of the main elements of the rule of law, and notably independence of the judiciary, effective access of citizens to justice, respect for judicial decisions and an objective system of public prosecutions, all of which are essential qualities to be expected of judicial systems in democratic states subject to the rule of law.

¹ doc. 10019/97 JUST 6.

6. The operational role of the police is also relevant to the rule of law, and the Council draws attention to the framework established by the Association of European Police Colleges for educational support by the European Union to the candidate Member States ¹ as a basis for training of the police, based on the democratic principles of accountability by the police within the framework of the rule of law.

7. The Council accordingly invites the European Commission to take these conclusions into account when drawing up the regular reports referred to in paragraph 29 of the Conclusions of the Luxembourg European Council. The Council further invites the European Commission to continue to promote, in the context of the PHARE horizontal justice and home affairs programme and within the framework of the Accession Partnerships, projects aimed specifically at reinforcement of the rule of law based on these conclusions and those of the Noordwijk Conference. The Council itself will have regard to these conclusions within the context of future discussions on enlargement.

¹ doc. 8243/97 ENFOPOL 118.