Unofficial translation

EUROPEAN COMMUNITIES
THE COUNCIL

Brussels, 5 November 1993
9756/93

RESTRICTED

ENFORC 2

NOTE

From : the Presidency

Dated : 5 November 1993

to : Steering Groupe II (law enforcement)

Concerns : Draft project from the Ad Hoc Working Group on EUROPOL relating to the draft Convention on the establishment of EUROPOL

REPORT OF THE AD HOC WORKING GROUP ON EUROPOL RELATING TO THE DRAFT CONVENTION ON THE ESTABLISHMENT OF EUROPOL

1. In accordance with the mandate given by Ministers at their meeting on 1 and 2 June 1993, the Working Group on EUROPOL started examining the draft text of the Convention brought in by the British Presidency.

2. During its meetings on 22 and 23 July, 2 and 3 September, 30 September and 1 October, and 20, 21 and 22 October 1993, the Group on EUROPOL thoroughly examined Articles 1 to 15, and 15 to 22 of the draft Convention.

3. Two thorough readings of the text brought in by the British Presidency took place. During the proceedings, the text under consideration was amended by the Group, and the Presidency put forward alternative Articles. The provisional text from the Group's proceedings until 22.10.93 is enclosed in the paper whose reference is 9757 ENFORC 3. At this stage, there is no agreement on this provisional text.

4. Articles 6 to 14 concerning data protection rules have not yet been examined.

5. The Group on EUROPOL is pleased that the discussion underlined main problems, and that substantial progress has been achieved on a certain number of items.

6. The Group on EUROPOL submitted this report to the Steering Group II. It contains :

- the issues which have not yet been subject to agreement and which are still being examined;
- the issues where an agreement on principle has already been reached.

1) ISSUES UNDER CONSIDERATION

7. It is suggested that the Council take note of the main issues still under consideration

- Forms of decision-making in the various bodies (unanimity or majority of two-thirds);
- Inclusion of terrorism in the scope of the Convention (Article 2);
- Defining the notion "other serious forms of international crime" and adopting an updating mechanism (Article 2)
- Updating of tasks (Article 3.2);
- Principle of the tasks relating to documentation, examination, information exchange as well as technical cooperation (Article 3bis);
- Relationship between EUROPOL and national units (Article 5);

- Forms of association of the Commission with a body such as the Management Board (Article 16);

- Work programming (Article 16)

- Staff regulations (Article 18);

- Financial regulations (Article 19);

- Designating the authority in charge of the external financial control (Article 19bis);

- Legal accountability (Article 20);

- Rules in matters of contacts with third countries and bodies in the field of transmission of person-related data (Article 21bis.3);

- Possibility of a parliamentary supervision.

8. The Working Group invites the Steering Group II to examine the possible options and to give directions it deems necessary for proceeding with the work on the two following issues :

A. Inclusion of terrorism within the scope of the Convention

The Greek and Spanish delegations asked that terrorism be included within the scope of the Convention. In their opinion, it would be appropriate to keep to the provisions of Article K1.9 of the Treaty on European Union, which also considers terrorism as a matter for police cooperation, which is the subject of a system of information exchange within EUROPOL.

Several delegations opposed the inclusion of terrorism under Article 2 in any case under all its forms. They emphasized that the Treaty on European Union provides for other forms of police cooperation than within EUROPOL.

B. Relationship between EUROPOL and national units

In order to guarantee the best possible functioning of EUROPOL, how is the Convention to consider the general principle of cooperation obligation (Article 21 ter) and/or of specific exceptions to this obligation as far as the transmission of information by national units is concerned.

2) ISSUES ON WHICH AN AGREEMENT ON PRINCIPLE HAS BEEN REACHED

9. It is suggested that the Council take note of the existence of an agreement of principle regarding the following matters :[3]

- Establishment of EUROPOL and national units (Article 1);
- Objectives of EUROPOL, except as regards the inclusion of terrorism (Article 2);
- Some tasks of EUROPOL (Article 3);
- National units and their tasks (Article 4);
- Legal capacity of domestic law (Article 15);
- Creation of a body such as the Management Board (Article 16);
- Principles of the appointment of the Director (Article 17);
- Principles governing the budget of EUROPOL (Article 19);
- Audit principles (Article 19bis);
- Contacts with bodies and third countries in the field of transmission of non-personal data (these bodies and third countries are still to be determined) (Article 21bis.1).

The result of the proceedings of the Ad Hoc Working Group is the subject of the paper 9757/93 ENFORC 3.

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[3] *Without prejudice to the implications for these issues of the results of work on data protection.*