EUROPEAN UNION
THE COUNCIL

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RESTREINT

ENFOCUSTOM 2

OUTCOME OF PROCEEDINGS

from: Working Party on Customs Cooperation

on : 18 January 1995

Nos prev. docs: 8925/94 ENFOCUSTOM 27 ADD 1
11416/94 ENFOCUSTOM 44 (Articles 1 to 16)
12064/94 ENFOCUSTOM 46 (Articles 4a, 17 and 18)

Subject: Proposal for a revision of the Naples Convention on Mutual Assistance between Customs administrations
- Articles 19 and 20

I.

The Working Party on Customs Cooperation continued examining the above proposal at its meeting on 18 January 1995.

The text of Articles 19 and 20, as it emerged from the discussion, is set out in the Annex to this note.

Outstanding questions regarding these Articles are summarized in section II below.

II.

Outstanding questions

1. **Article 19 (Cross-border surveillance)**

- A number of delegations (DK/I/A/S) entered scrutiny reservations.

- One delegation (IRL) proposed making the application of this Article optional.
- One delegation (E) thought the word "surveillance" should be defined (if necessary by a statement for the minutes).

- Paragraph 3(a)

  The provision on the duty of identification could be deleted if a similar provision were included in Article 17 (Principles) or if the text of Article 10 was moved from Title II to Title I (General Provisions) of the draft Convention.

- Paragraph 3(f)

  The Working Party agreed to return to this point.

2. Article 20 (controlled delivery)

- Paragraph 2

  Two delegations (DK/IRL) entered scrutiny reservations.

- Paragraph 3

  One delegation (E) entered a scrutiny reservation.

Draft text for Articles 19 and 20

Article 19 (Cross-border surveillance)

1. Where a person under suspicion of planning, committing or having committed or participated in a contravention under Article 17(2) is under surveillance by the officials of a Member State, they shall be authorized to continue that surveillance within the territory of another Member State after approval by the competent authority. The approval may at any time be made subject to requirements. Such surveillance may also cover goods and objects of the type described in Article 17(2)(b) to (d), to ascertain the route taken or the recipient.

   The surveillance operation must, on request, be transferred to officials of the Member State within whose territory the surveillance is being carried out.

2. Where prior approval cannot be sought from the other Member State on account of the particular urgency of the matter, officials may continue the surveillance across the border on condition that they contact the competent authority of the State of entry at the latest on crossing the border.

3. Cross-border surveillance shall be permitted only under the following general conditions:

   (a) Officials engaged in surveillance [*must be able to prove their identity and*] shall be bound by the law of the Member State within whose territory they are present. They shall follow the instructions of the competent authorities.

   (b) Save where paragraph 2 applies, officials shall carry a document with them during surveillance operations to show that the competent authority has approved the surveillance.

   (c) Officials engaged in surveillance shall not be authorized to stop or arrest the person under surveillance.

   (d) Entry into private dwellings or on to land to which there is no public access shall not be permitted.

(e) Report must be made, on request, to the competent authorities within whose territory the surveillance operation took place; in addition, the surveillance officials may be required to appear in person at the authority's office.

[*(f) Officials engaged in surveillance may carry their official firearms with them unless a decision to the contrary is expressly taken by the competent authorities of the Member State within whose territory the surveillance is taking place; their use shall not be permitted except in self-defence.*]

(g) The authorities of the Member State from which the surveillance officials come shall, on request by the competent authorities of the Member State within whose territory the intervention took place, assist in the subsequent investigations, including court proceedings.

4. The authorities of the requested Member State may decide at any time to call a halt to the surveillance carried out under the conditions laid down in paragraphs 1 and 2.

Article 20 (Controlled delivery)

1. At the request of the applicant authority the requested authority may, under the conditions laid down in its national legislation allow the introduction into the territory of the European Union or the transit of goods suspected of being prohibited goods within the meaning of Article 17(2)(a) to be kept under surveillance if, in the opinion of the requested authorities that is the best way of detecting the principal perpetrators of a contravention or the distribution channels for prohibited goods.
Prohibited goods, the controlled delivery of which has been agreed, may be intercepted by agreement between the Member States involved and may be released for other transport in such a way that they remain untouched, are removed or are substituted wholly or in part.
If the merchandise represents a particular hazard to persons involved in transporting it or for the general public, controlled delivery shall not take place.

[2. *The requested authority shall take over control of the delivery when the goods cross the border or at an agreed hand-over point in order to avoid any interruption of surveillance.*
During the rest of the journey it shall ensure that the goods are kept permanently under surveillance in such a way that at anytime it has the possibility of arresting the

perpetrators and seizing the prohibited goods.

3. *Where a perpetrator or accomplice is arrested after controlled delivery, court proceedings shall be instigated by the competent authorities of the place of arrest.]*