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EUROPEAN UNION
THE COUNCIL

Brussels, 19 November 1993 (23.11)
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RESTREINT

JUSTPEN 12

NOTE

from : Permanent Representatives Committee

to : Council (Justice and Home Affairs)

No. prev. doc. 10163/93 JUSTPEN 7

Subject: Draft Council Resolution on proceedings relating to the comparative study of the laws, regulations and administrative provisions of the Member States applicable to fraud against the Community budget which was conducted by the Commission

1. At their meeting on 13 November 1991, the Ministers for Justice took note of the report on the relationship between Community law and criminal law (8859/91 JUR 100 COOP 11, 23 October 1991). That report was the result of a study carried out by an ad hoc group of government experts in the context of European Political Co-operation.

2. On the same occasion, the Ministers adopted a Resolution concerning the protection of the financial interests of the Communities ([1]). In particular, they requested the Commission to conduct a comparative study of the laws, regulations and administrative provisions of the Member States relating to fraud against the Community budget.

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([1]) Resolution 91/C328/01 - OJ C 328, 17.12.1991.

3. In response to that invitation, the Commission conducted a study and submitted the results to the Council in July 1993.

The study suggests avenues to be explored with a view to protecting the Communities' financial interests and highlights certain issues requiring examination in the appropriate fora.

4. Some of those issues fall within areas covered by Title VI of the Treaty on European Union and therefore require detailed examination by the bodies set up within the framework of that Title.

5. Moreover, the Commission representative indicated that the Commission was currently considering the matter on the basis of work available and did not rule out submitting a document for the next Council meeting (Justice and Home Affairs), on 29 and 30 November 1993.

6. In that context, Steering Group III (judicial co-operation - criminal matters) agreed to propose that the attached draft Resolution on proceedings to be carried out in relation to the comparative study conducted by the Commission be submitted to the Council (Justice and Home Affairs) for adoption at that meeting,

ANNEX

DRAFT COUNCIL RESOLUTION

THE COUNCIL OF THE EUROPEAN UNION,

HAVING regard to the Treaty on European Union,

RECALLING the Council Resolution of 13 November 1991 concerning the protection of the financial interests of the Communities in which the Council and the Representatives of the Governments of the Member States, meeting within the Council, called upon the Commission to conduct a comparative law study of the Member States' laws, regulations and administrative provisions relating to fraud against the Community budget;

BEARING IN MIND, furthermore, recent developments regarding the relationship between criminal law and Community law, particularly the Court of Justice judgment of 27 October 1992 in case C-240/90 ([1]);

CONSIDERING THAT, without prejudice to Community competence, the question of protection of the financial interests of the Communities must henceforth be examined in the light of the co-operation introduced under Title VI of the Treaty on European Union;

1. Notes with interest the comparative study of the laws, regulations and administrative provisions of the Member States relating to fraud against the Community budget which was conducted by the Commission on the basis of the Resolution of the Council and the Representatives of the Governments of the Member States meeting within the Council;

([1]) Germany v. Commission of the European Communities - ECR 1992-8, Part I, p. 5383.

2. Considers that that study suggests very useful avenues to be explored with a view to protecting the financial interests of the Communities and highlights fundamental questions of principle which require detailed examination;

3. Considers that some of those questions fall within areas of common interest covered by Title VI of the Treaty on European Union and therefore require detailed examination by the bodies set up within the framework of Title VI;

4. Considers that the study of the relationship between criminal law and Community law should be continued in the light of the aforesaid judgment of the Court of Justice and the study conducted by the Commission;

5. Considers it necessary to examine the implementation of Article 209a of the Treaty in the Member States;

6. Considers it necessary to examine, in the light of the study conducted by the Commission and the earlier work of the ad hoc Group on Community Law and Criminal Law, the measures which should be taken to achieve a greater degree of compatibility in the laws, regulations and administrative provisions of the Member States in the effort to combat inadmissible practices by which harm is done to the financial interests of the Communities, with particular attention to the following points:

(1) offences;
(2) liability;
(3) penalties;
(4) settlements and the like;
(5) extra-territorial application and mutual assistance in criminal matters;
(6) limitation,

7. Has decided to examine, in the second half of 1994, a report to be submitted to it in accordance with points 4, 5 and 6 of this Resolution and any proposals it may contain;

8. This Resolution does not prejudice the division of competence between the Community and the Member States in relation to these matters.