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LIMITE

ENFOCUSTOM 47
JUSTPEN 66

NOTE

from : Spanish delegation

to : Customs Cooperation Working Party

No. prev. doc.: 9505/97 ENFOCUSTOM 42

Subject: Draft Convention on Mutual Assistance and Cooperation between Customs
Administrations (Naples II)

In a fully cooperative spirit, the Spanish delegation has made a thorough examination of the draft Convention on Mutual Assistance and Cooperation between Customs Administrations (Naples II) [7108/1/97 ENFOCUSTOM 20 REV 1 of 27 May 1997 and 9320/97 ENFOCUSTOM 41 of 24 June 1997].

The Spanish delegation would give a reminder that it has on many occasions pointed to the need for the draft Convention to be considered in detail by the appropriate Working Parties.

To give but one example of this, in 1995 the Spanish delegation requested that the draft Convention be examined by the appropriate Working Party under Steering Group III (Judicial cooperation in Civil and Criminal Matters). This is borne out by the note from Steering Group III in 4346/96 JUSTPEN 9 of 17 January 1996, placing on record the request for consideration in the Article K.4 Committee.

Since those requests have not up to now been acted upon and given the lack of urgency surrounding the draft, as its purposes have been met for all Schengen Member States, the Spanish delegation is entering a general reservation on the draft Convention until such time as it has been considered in detail by the appropriate Working Parties under Steering Group II (Europol and Police Cooperation) and under Steering Group III (Judicial Cooperation in Criminal Matters).

This is not a procedural reservation, but rather a call for detailed substantive consideration.

In addition to the general reservation, without wishing to make life difficult for Member States and the Luxembourg Presidency, the Spanish delegation wishes to record the following specific reservations:

Article 3: Relationship to mutual assistance provided by the judicial authorities

Spain feels it necessary for the Convention itself, or a Protocol to it, to specify each Member State's judicial authorities. The resulting list should be approved by a consensus of all Member States.

This point should be considered by the Working Party on Judicial Cooperation in Criminal Matters.

Article 4: Definitions

The main source of Spain's difficulties lies in paragraphs 1, 5, 6 and 7, regarding the terms "national customs provisions", "applicant authority", "requested authority" and "customs administrations".

Those authorities should be listed in a Protocol annexed to the Convention and be approved by a consensus of all Member States.

The words "a Member State" should also be replaced by "the Member State".

Article 5: Central coordinating units

A single coordinating unit should be established by each Member State. The wording of the Article should ensure that this is the case.

Article 7: Obligation to prove identity

Each Member State's authorities issuing the written authority and/or identity documents required should be laid down in an Annex to the Convention. Those authorities should be approved by a consensus of all Member States.

Article 14: Use as evidence

The provisions of this Article should be considered by the Working Party on Judicial Cooperation in Criminal Matters under Steering Group III, since it involves the value of evidence obtained outside a State.

Article 18: Use as evidence

As with Article 14, this will have to be considered by the Working Party on Judicial Cooperation in Criminal Matters.

TITLE IV: Special forms of cooperation

The Spanish delegation's general reservation on the entire content of Title IV of the draft Convention still stands and the delegation urges that it be considered by the Working Party on Judicial Cooperation in Criminal Matters, the Police Cooperation Working Party and the Europol Working Party.

Within Title IV, the Spanish delegation wishes to record the specific reservations set out below.

Article 19: Principles

The reference should be to the Member State's judicial authorities.

The Article needs to be considered by the Working Party on Judicial Cooperation in Criminal Matters, in order to make drafting and substantive improvements.

Article 20: Hot pursuit

In Spain's view, the term "local authorities" has no clearly defined meaning. It could even conceivably extend to municipal authorities, regional authorities or dependent territory authorities. The term should be avoided.

A more serious point, if such be possible, is the provisions of paragraphs 6, 7 and 8 inasmuch as they involve determining internal and external borders and allow an opt-out, which is an unacceptable idea for Schengen Member States. If persisted with, this would make it possible to go back on obligations under the Convention applying the Schengen Agreement.

The matter will have to be considered by the Working Party on Judicial Cooperation in Criminal Matters.

Article 21: Cross-border surveillance

The Spanish delegation's comments are similar to those made on Article 20.

In addition, the authorities designated should be approved by a consensus of all Member States.

Article 22: Controlled delivery

Spain finds the wording unsatisfactory. It suggests that this be considered by the Working Party on Judicial Cooperation in the light of the European Union/Schengen Manual on controlled delivery.

Article 23: Covert investigations

In Spain's view, the content of this Article poses similar problems to that of the preceding Articles.

It will need to be considered in detail by the Working Party on Judicial Cooperation in Criminal Matters.

Article 24: Joint special investigations teams

The content of this Article will have to be discussed in the Working Party on Judicial Cooperation in Criminal Matters and the Europol Working Party.

Article 25: Data protection for the non-automated exchange of data

The data protection arrangements are inadequate, in Spain's view, and inconsistent with the Europol arrangements.

They will have to be considered by the Europol Working Party.

Article 26: Court of Justice

Spain's substantive reservation on the inclusion of this Article still stands.

Article 27: Reservations

The Spanish delegation takes the view that no reservations should be permissible in respect of this Convention. It calls for the Article to be deleted on the grounds that it is redundant.

Article 31: Accession

The Convention should be open to accession by States not belonging to the European Union. Norway and Iceland are full members of the Schengen group.

Article 32: Amendments

The Spanish delegation takes the view that amendments to the Convention and to the Annexes to it should be adopted unanimously by the Member States.

As it stands, the draft Convention does not involve any implementing measures. It should not be conceivable for amendments to it to be regarded as such.

The Spanish delegation lastly wishes to point out that, until the appropriate Working Parties have considered the matters falling within their remit and arrived at an agreed position, its reservations set out above will continue to stand.

