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Statewatch European Documentation &
Monitoring Centre on justice and home
affairs in the European Union

PO Box 1516, London N16 0EW, UK
tel: 0181 802 1882 (00 44 181 802 1882)
fax: 0181 880 1727 (00 44 181 880 1727)

NOTE

from : Presidency

to : K.4 Committee

No. prev. doc.: 9505/1/97 ENFOCUSTOM 42 REV 1

Subject: Draft Convention on Mutual Assistance and Cooperation between Customs
Administrations (Naples II)
- Outcome of the K.4 Committee proceedings on 18 September 1997

At its meeting in Luxembourg on 18 September 1997, the K.4 Committee examined the questions still in abeyance regarding the abovementioned draft Convention on the basis of 9505/1/97 ENFOCUSTOM 42 REV 1.

The outcome of the Committee's proceedings may be summarized as follows:

1. Article 1(2) and Article 3(2)

The E delegation would be submitting a draft text to take account of "police cooperation" in the abovementioned Articles.

The DK delegation requested that Denmark be added to the statement envisaged by Finland regarding the terms "judicial authorities" or "judicial authority" (see page 38 of 9505/1/97).

The B delegation pointed out that these Articles were still being examined by the Belgian government.

The L delegation's proposal concerning the list of national authorities would be examined at a later date (see also Article 20(1) and Article 21(1)).

2. Article 4(3)

The Presidency proposed that the last two indents of paragraph 3 read as follows:

- " – participation in a criminal organization committing such infringements
- the laundering of the money connected with the infringements referred to in this paragraph."

The DK delegation announced a draft unilateral statement on this paragraph.

The I delegation proposed that the last two indents be deleted.

3. Article 6(2)

The DK delegation proposed that this paragraph be aligned on Article 2(1) of the Joint Action of 14 October 1996 concerning liaison officers, which reads as follows:

- "1. Liaison officers shall facilitate and expedite the collection and exchange of information through direct contacts with law enforcement agencies and other competent authorities in the host State."
(OJ No L 268, 19.10.1996, p.2).

4. Article 8

The DK delegation announced a proposed amendment to the text.

5. Article 11

The Presidency suggested that the first sentence of this Article read as follows:

"At the request of the applicant authority, the requested authority shall as far as possible keep a special watch or arrange for a special watch to be kept on a person where there are serious grounds for believing that he has infringed Community or national customs provisions or that he is committing or planning such infringements."

The B delegation stated that this Article was still being examined by the Belgian government (see also Article 21(1)).

6. Articles 14 and 18

The B and E delegations entered reservations on these two Articles.

7. Article 19 et seq. (title IV)

The P delegation withdrew its reservation on these Articles.

The E delegation stated that its reservation was linked to the future agreement with the UK government on the territorial application of the Convention.

8. Article 19(2) and (3)

The DK delegation considered that the list of infringements should not go beyond what was laid down in the Schengen Convention (see Articles 40 and 41 thereof).

The Danish version of Article 19(2) should be aligned on the French version.

Several delegations (F/I/NL/S/UK) could not accept the A delegation's suggestion on page 18 of 9505/1/97. They suggested that the problem be resolved by means of a unilateral statement.

The A and IRL delegations proposed that the words " where such trade is an extraditable offence" in Article 19(2)(d) be deleted.

9. Article 19: Damage caused by officers

Former text of paragraphs 5 to 7 (page 17 of 9505/97)

- "5. Where officers of a Member State engage in activities in the territory of another Member State by virtue of this Title and cause damage in that other Member State, the seconding Member State shall be liable for any such damage caused, in accordance with the national law of the Member State in whose territory the activities took place.
6. The Member State in whose territory the damage referred to in paragraph 5 occurred shall make good the damage in the same way as it would have done if the damage had been caused by its own officers and will be reimbursed in full by the Member State whose officers have caused the damage.
7. Without prejudice to the exercise of its rights vis-à-vis third parties and notwithstanding the obligation to make good damages according to paragraph 6, each Member State shall refrain, in the case provided for in paragraph 5, from requesting reimbursement of the amount of damages it has sustained from another Member State."

The D delegation proposed that former paragraphs 5 to 7 be replaced by new paragraphs 5 and 6 (page 19 of 9505/1/97):

- "5. Where officers of a Member State engage in activities in the territory of another Member State by virtue of this Title and cause damage by their activities, the Member State in whose territory the damage was caused shall be liable for any such damage caused and shall make good the damage in the same way as it would have done if the damage had been caused by its own officers. That Member State will be reimbursed in full by the Member State whose officers have caused the damage for the amounts it has paid to the victims or to other entitled persons or institutions.

6. Without prejudice to the exercise of its rights vis-à-vis third parties and notwithstanding the obligation to make good damages according to the second sentence of paragraph 5, each Member State shall refrain, in the case provided for in the first sentence of paragraph 5, from requesting reimbursement of the amount of damages it has sustained from another Member State."

The Legal Service was asked to give its opinion on this point.

10. Article 19(7)

All delegations accepted the text in square brackets.

11. Article 19, new paragraph

The D delegation proposed two alternative texts for a new paragraph to be added to Article 19 (pages 19 and 20 of 9505/1/97):

- "8. In the course of the operations referred to in Articles 20 to 24, officers on mission in the territory of a Member State shall be treated in the same way as officers of that State as regards infringements committed against them or by them.

or (alternative text)

8. In the course of the operations referred to in Articles 20 to 24, officers on mission in the territory of a Member State shall enjoy the same protection in that territory as is guaranteed to officers of the customs administration of that Member State by national laws and regulations. They shall be treated in the same way as officers of that State as regards the criminal consequences of infringements committed against them or by them."

12. Article 20(1)

Following examination of paragraph 1, the E delegation withdrew its suggestion for an additional sentence.

13. Article 20(8)

The D delegation entered a reservation on the possibility of declaring that a Member State is bound only by part of Article 20.

14. Article 21(1)

(a) The Presidency suggested that the first sentence of paragraph 1 read as follows:

"1. Officers of the customs administration of a Member State who are keeping a person under observation in their country where there are serious grounds for believing that he has committed, is committing or is planning to commit..."
(see also Article 11)

(b) The DK and L delegations proposed that the beginning of paragraph 1 read as follows:

"1. Officers of the customs authorities of a Member State who, as part of a judicial inquiry, are keeping under observation..." (rest unchanged).

Several delegations (A/F/IRL/I/NL/UK) were against this proposal.

(c) The S delegation suggested that this be confined to "extraditable offences".

15. Article 21(2) up to Article 34 (last Article)

The points still outstanding with regard to these Articles were not examined by the K.4 Committee at its meeting on 18 September 1997.