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EUROPEAN UNION
THE COUNCIL

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NOTE

from : EDU/Europol

to : Europol working group

Subject : Relations between EDU/Europol and Interpol
- EDU remarks to the HENU's document

Background

The attached document (no. 2623-09r5 dated 26 May 1997) is the result of a study requested by Steering Committee II of the Heads of Europol National Units on the complementary roles of Europol and Interpol.

The EDU assisted the Group of Experts in drawing up the basic document on the relationship between Europol and Interpol and carefully monitored its activities. The Management Team also followed the extensive discussions that took place during various meetings of the Heads of Europol National Units. The discussions reflected different perspectives within the European Union. These differences appear to be the logical consequence of differences in the laws, administrative provisions and systems of justice and law enforcement in the Member States.

Some of the experts were also responsible for their respective Interpol National Central Bureaux, a responsibility that had a decisive influence on their positions. As could be expected, they opted to maintain the *status quo* rather than to open to newer horizons.

The EDU added a number of remarks in italics to the basic document in order to draw the Europol Working Group's attention to certain aspects of the topics discussed in it (doc. 2623-09r2 dated 21.11.1996).

This prompted a debate during the HENU's meeting concerning the "paternal nature" of the document. It was recognised that the addition of sections concerning the EDU's views to the basic document gave rise to a certain confusion despite the use of italics to distinguish those sections. The Heads of Europol National Units consequently agreed that, in future, the best way to report to Steering Committee II about the outcome of their discussions would to submit an updated version of the document previously agreed by them to the WG on Europol with a cover letter from the Co-ordinator concerning the EDU's remarks and concerns.

EDU remarks

The EDU believes that some of the document's contents show excessive concern about safeguarding and maintaining the current situation, whereas the opposite should be true. The complementary nature of Europol and Interpol's roles should be seen from a more progressive and wider perspective. That perspective should take account, among other things, of the inevitable evolution of the EDU's current structures and - at a more general level - of the developments of judicial and police co-operation within the Third Pillar.

Political framework and support

EDU/Europol and Interpol both have the support of the political authorities of the EU Member States. However, Europol has been designed specifically in accordance with the control systems (including those for political, legal data protection, financial and judicial control) established in accordance with the legal principles and structures of the EU Member States. In fact, the EDU/ future Europol are being used increasingly as an instrument by the European Council to facilitate and support law enforcement initiatives at the EU level (advice, monitoring, support and study functions). Some EDU activities have already been attuned to the needs for a common foreign policy (2nd pillar) in the European Union. Moreover, the current phase of expansion in the Union has prompted governments, national parliaments, the Commission and the European Parliament to devote special attention to Europol.

Analytical activities

The EDU would like to point out the vital importance of the analytical activities to be carried out by Europol as outlined in the "Vision Document"[1] The EDU foresees a steady growth in the importance of the analytical department and in its resources. Europol analysts will be dealing with highly sensitive personal data and working very closely with the Member States' representatives at Europol (the ELOs). The analysts' activities will be strictly regulated by all the data protection (and other) conditions established in the Europol Convention. Given the thoroughness of the regulations laid down in the Europol Convention, it is clear that analysis of this nature within the EU should be carried out by Europol only.

Information exchange

As regarding information exchange for police use, the EDU would suggest that the "sensitivity" of the information itself be considered as a possible criterion for decisions to forward information requests to the EDU/Europol. A similar suggestion was included in the initial Dutch proposal, but was rejected due to its lack of clarity.
The EDU would favour such a proposal, but would suggest adding a specific guideline to establish Europol as the preferred channel for requests involving "sensitive information". This additional point should be included between steps 4 and 5 of the annex to the HENU's document. Naturally, a common definition of "sensitive information" would have to be discussed and approved.

In order to establish such definition, as well as for in-depth consideration of other issues relating to information exchange, its conditioning and analysis, the results of the recent "Intellex" conference (Noordwijk, 20-22 May 1997) should be taken in due account. Moreover, under the Convention, the future system at Europol guarantees certain conditions for data protection in the storage and handling of both particular and sensitive data.

[1] Doc. No. 3000-02r4 "An EDU Vision of Europol" dated 10 January 1997.

Effective support

Another aspect of the HENU document that merits more emphasis concerns the effective support that the EDU (and to a greater extent, the future Europol) can provide for the investigations and operations conducted by the competent agencies of the Member States. This kind of support is possible due - more than anything else - to a more clear legal framework, especially in the field of data protection. As expressed in declarations and agreements of EU political leaders, the operational and analytical activities carried out by the EDU/future Europol will serve more effectively to defend the standpoints and interests of the European Union.

The multi-agency composition of the staff body (who come from police, customs, money-laundering investigation and immigration agencies) also contributes to the EDU/Europol's supportive role. At the same time, it guarantees a multidisciplinary approach to the fight against transnational organised crime.
The competent law enforcement agencies in the Member States have grown more and more to appreciate this aspect. Accordingly, EDU staff (both ELOs and analysts) have become increasingly involved - from beginning to end - in ongoing and long-term investigations and operations carried out by Member States, who benefit from the EDU's support in terms of staff, technology and working methods.

Further proposals for higher bodies

The EDU believes that a number of final proposals should ultimately be submitted to higher bodies. This would serve to reinforce the contents of the document itself and to establish its importance as real "policy" for the law enforcement activities carried out in the EU Member States. These proposals should aim:

- to confirm at the political level (Council) the complementary role between Interpol and the EDU/Europol;
- to invite - at the operational level - different Working Parties to identify the specific roles of Interpol and the EDU/Europol for each relevant specific initiative.