

COUNCIL OF THE EUROPEAN COMMUNITIES

1533rd meeting of the Council

- Justice -

Brussels, 13 November 1991

President: Mr. Hirsch Ballin
Minister for Justice, The Netherlands

The official press release was unavailable. A summary of the meeting has been reproduced from the Bulletin of the European Communities, No. 11-1991.

1533rd meeting

1.7.9. Ministers for Justice meeting within the Council (Brussels, 13 November).

- Previous meeting: Bull. EC 5-1987, point 2.4.18

President: Mr Hirsch Ballin, Dutch Minister for Justice.

Commission: Mr Schmidhuber and Mr Van Miert.

Main items

Protection of the Community's financial interests: resolution adopted (→ point 1.5.10).

Celex system: resolution adopted (→ point 1.2.204).

Other business

European training for judges: discussed.

Protection of the Communities' financial interests

1.5.10. Resolution of the Council and of the representatives of the Governments of the Member States, meeting within the Council, concerning the protection of the financial interests of the Communities.

References:

Draft Treaty amending the Treaties establishing the European Communities so as to permit the adoption of common rules on the protection under criminal law of officials and other servants of the Communities: Tenth General Report, point 151

Council statement on the fight against fraud affecting the Community budget: Bull. EC 7/8-1991, point 1.5.11

Parliament resolution on the legal protection of the Community's financial interests: OJ C 305, 25.11.1991; Bull. EC 10-1991, point 1.1.9

Adopted on 13 November. The Ministers, aware of the acute problems raised by fraud, in particular, at the expense of the financial interests of the Communities and the risk of the organization of offences becoming internationalized as a result of the free circulation of goods, persons and capital, decided to devote particular attention to measures likely to increase the effectiveness of anti-fraud operations by both the Community institutions and the Member States. The Ministers also asked for a re-examination of the relevance of the Commission proposal of 1976 to incorporate in the Treaties common rules on the legal protection of the financial interests of the Communities. Turning to the discussions on the Intergovernmental Conference on Political Union, they expressed their satisfaction at the arrangements proposed for examining matters of common interest in both the legal sector and internal affairs. They also welcomed the report on the relationship between Community and criminal law drawn up by a group of government experts in the context of European cooperation and asked it to continue its study, taking into account the judgments of the Court of Justice and other legal developments, and to re-examine the Commission's proposal dating from 1976. Finally, it asked the Commission to complete, and to present to the Council in the first half of 1993, a comparative study of the laws, regulations and administrative provisions of the Member States, in order to see whether action should be taken to arrive at greater compatibility of those provisions.

The resolution is reproduced in full in point 2.4.1 of this Bulletin.

4. Measures to combat fraud

2.4.1. Resolution of the Council and of the representatives of the governments of the Member States, meeting within the Council, concerning the protection of the financial interests of the Communities.

'The Council of the European Communities and the representatives of the governments of the Member States of the European Communities, meeting within the Council,

A. Concerned about fraud (including tax evasion and customs fraud) being committed on a large scale and with an international impact and conscious of the importance of taking effective and powerful measures aimed at preventing and combating inadmissible practices by which harm is done to the financial interests of the Communities;

B. In appreciative recognition of the various efforts that have already been made on the part of the Commission of the European Communities to expose and help prevent fraud relating to the income and expenditure of the Communities;

C. Conscious of the great concern that also exists in the European Parliament and the European Court of Auditors at the extent to which fraud is believed to be committed at the expense of the financial interests of the Communities;

D. Aware, in this regard, of the report and the resolution of the European Parliament of 24 October 1991 concerning the legal protection of the financial interests of the Communities;

E. Recalling the statement made by the Council on 8 July 1991 concerning the fight against fraud affecting the Community budget;

F. Recognizing that large-scale fraud relating to the income and expenditure of the Communities often assumes cross-border forms and that the increasingly free movement of goods, persons, services and capital can also increase the risk of the organization of fraud offences becoming internationalized;

G. Convinced that a responsibility rests with the Community institutions as well as with Member States, each within their own sphere of competence, where necessary in close cooperation, to take suitable measures to analyse, prevent and combat this phenomenon;

H. Recognizing, however, that the Commission's proposal dating from 1976 containing a draft to amend the Communities' Treaties so as to permit the adoption of common rules on the protection under criminal law of the financial interests of the Communities, has not as yet received a favourable

opinion by the Council, but that in the light of recent developments there might be reason to re-examine the merits of this proposal;

I. Stressing their interest in the development which was started in the framework of the Intergovernmental Conference on Political Union and trusting that suitable attention will be paid to problems relating to the combating of fraud against the financial interests of the Communities;

J. Recognizing that in the context of political union a more clearly defined structure for consideration by Member States of matters of common interest in areas of justice and internal affairs is envisaged, that measures to combat fraud against the financial interests of the Communities would be appropriately dealt with in that framework and that nothing in this resolution is intended to prejudice decisions to be taken in that framework:

1. Take the view that combating fraud of an international dimension should be one of the first topics to be addressed under the new arrangements which it is hoped will emerge from the intergovernmental conference and that in this perspective the points cited below should be noted;

2. Welcome the proposals to bring about:

(a) a form of voluntary cooperation among interested Member States for setting up an easily and generally accessible documentation network for scientific information relating to cross-border crime, including fraud at Community level, and

(b) improved contacts on a European scale in respect of projects for scientific research into such forms of cross-border crime;

3. Have noted with interest the report submitted to them on the relationship between Community law and criminal law, the report being the result of a study by an *ad hoc* group of government experts in the context of European political cooperation;

4. Are of the opinion that the study needs to be continued, taking into account the judgments of the Court of Justice in cases which are still pending and other relevant legal developments and provisionally invite the *ad hoc* group of government experts in the context of European political cooperation to pursue this task until further decisions are taken in the light of the new structures resulting from the Intergovernmental Conference on Political Union;

5. Instruct the *ad hoc* Working Party of the Council to re-examine, in the mean time, the Commission's proposal dating from 1976 for a draft to amend the Communities' Treaties so as to permit

the adoption of common rules on the protection under criminal law of the financial interests of the Communities, taking into account recent developments in order to evaluate its usefulness and actuality;

6. Take the view that the Member States should not simply adopt for themselves the necessary general or specific measures to ensure the upholding of Community law and effective operation of the Communities themselves, but that it is likewise important to have in place an effectively functioning system of instruments for administrative and criminal cooperation for the purposes of preventing and combating infringements of Community law and other practices by which the interests of the Communities are damaged;

7. Invite those Member States which have not yet done so, to consider becoming party, as soon as possible, to the relevant Conventions in the field of judicial cooperation in criminal matters;

8. State that cooperation between the Member States in the prevention and combating of fraudulent practices by which harm is done to the financial interests of the Communities is enhanced by a compatibility of norms in the legal and administrative provisions of the Member States by which such conduct is sanctioned;

9. **Emphasize the urgency for the Commission to complete, in the course of 1992, the study currently undertaken and request the Commission to conduct, as soon as possible, a comparative law study of the abovementioned legal and administrative provisions of the Member States, in order to see whether action should be taken to achieve greater compatibility of these provisions;**

10. Request the Commission to pay particular attention in such a comparative study to the following aspects:

- (i) definition of concept of fraud (levy fraud, subsidy fraud);
- (ii) components of offence;
- (iii) territorial applicability;
- (iv) applicable sanctions;
- (v) liability, including liability for legal persons;

11. Invite the Commission to submit the results of these studies to the appropriate forum as soon as possible but not later than in the first half of 1993.

12. This resolution does not prejudice the question of distribution of competence between the Community and the Member States.'

Celex

1.2.204. Council resolution on the operation of the computerized documentation system for Community law (Celex).

- **Reference:** Council resolution on the automation of legal documentation: OJ C 20, 28.1.1975; Bull. EC 11-1974, point 1108

Adopted on 13 November. The Council stressed that a computerized documentation system which can be easily accessed in all the Community languages is of crucial importance for improving the knowledge of Community law and the relevant national legislation.

In particular, it invited the Commission to speed up completion of the Celex database and to devise ways of creating an appropriate structure to ensure that the system functions properly.

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BRUXELLES, LE 13 NOVEMBRE 1991

NOTE BIO (91) 367 AUX BUREAUX NATIONAUX
CC : AUX MEMBRES DU SERVICE DU PORTE-PAROLE

CONSEIL JUSTICE DU 13 NOVEMBRE - DEBAT SUR LES RELATIONS ENTRE LE
DROIT COMMUNAUTAIRE ET LE DROIT PENAL

APRES UN EXPOSE DETAILLE DU COMMISSAIRE PETER SCHMIDHUBER SUR LES
MESURES DEJA PRISES A L'INITIATIVE DE LA COMMISSION POUR LUTTER
CONTRE LA FRAUDE (IP(91)990), LE CONSEIL A DEBATTU DE LA RELATION
ENTRE LE DROIT PENAL - OU SEULS LES ETATS MEMBRES SONT COMPETENTS
- ET LE DROIT COMMUNAUTAIRE. COMMENT PROTEGER EQUITABLEMENT ET
EFFICACEMENT LES INTERETS FINANCIERS COMMUNAUTAIRES, ALORS QUE LE
DROIT PENAL - ET DONC LES POURSUITES PENALES - EST DU RESSORT DES
ETATS MEMBRES QUI POSSEDENT DES SYSTEMES JURIDIQUES PARFOIS FORT
DISSEMBLABLES?

TROIS SOLUTIONS SONT ENVISAGEABLES EN THEORIE :

1. RECONNAITRE A LA COMMUNAUTE UNE COMPETENCE PENALE (ON

POURRAIT ALORS FIXER DES SANCTIONS PENALES DANS DES DECISIONS COMMUNAUTAIRES):

2. ASSURER AU MOINS UNE PROTECTION EGALE AUX INTERETS FINANCIERS COMMUNAUTAIRES PAR RAPPORT AUX INTERETS FINANCIERS NATIONALS. UNE FRAUDE LESANT LA COMMUNAUTE SERAIT PUNIE AUSSI LOURDEMENT QU'UNE FRAUDE LESANT L'ETAT NATIONAL. LES DIFFERENCES ENTRE LES ETATS MEMBRES SUBSISTERONT - LA PROTECTION JURIDIQUE DES INTERETS COMMUNAUTAIRES VARIERAIT ALORS EN FONCTION DE LA SEVERITE DU DROIT NATIONAL:
3. UNE HARMONISATION DES NORMES LA OU LA PROTECTION DE LA COMMUNAUTE EST EN JEU.

POUR L INSTANT, LE DEBAT NE FAIT QUE S'ENGAGER. SA POURSUITE DEPEND AUSSI DES RESULTATS DE LA CIG SUR L'UNION POLITIQUE. LE CONSEIL DE JUSTICE S'EST DONC LIMITE A ADOPTER UNE RESOLUTION PREVOYANT LA POURSUITE DES TRAVAUX D'UN GROUPE AD HOC CHARGE D'EXAMINER LA QUESTION. EN PLUS, IL A INVITE LA COMMISSION A FAIRE REALISER UNE ETUDE COMPARATIVE DES DISPOSITIONS LEGISLATIVES, REGLEMENTAIRES ET ADMINISTRATIVES DES ETATS MEMBRES 'AFIN DE VOIR S'IL Y A LIEU DE PRENDRE DES MESURES POUR REALISER UNE PLUS GRANDE COMPATIBILITE DE CES MESURES'. LES MINISTRES ONT EGALEMENT ADOPTIE UNE RESOLUTION SUR LA REORGANISATION DU SYSTEME CELEX (DOCUMENTATION AUTOMATISEE SUR LE DROIT COMMUNAUTAIRE) AFIN DE LE RENDRE PLUS PERFORMANT.

AMITIES

C. STATHOPOULOS

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Bruxelles, le 14 novembre 1991.

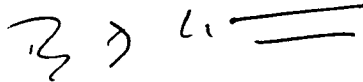
**NOTE BIO(91) 367 (suite 1 et fin) AUX BUREAUX NATIONAUX
CC. AUX MEMBRES DU SERVICE DU PORTE-PAROLE**

Conseil Justice (Bruno Julien)

- Le Conseil a passé en revue le chapitre VIII du document de Palma. Il s'agit de plusieurs conventions traitant de la coopération judiciaire dans les affaires criminelles et civiles, mesures décidées par le groupe de Rhodes pour la mise en oeuvre de l'abolition des frontières (lutte contre la drogue, coopération judiciaire, droit d'asile...). La Présidence a fait le bilan des différentes conventions qui avaient été ratifiées ou qui restaient encore à ratifier avant le 31/12/1992.

- Le Conseil a ensuite procédé à un tour de table sur la mise en place d'un réseau européen de recherche et de documentation sur la criminalité internationale. La Présidence a décidé de poursuivre les discussions entre les Etats membres pour envisager les formes que pourrait prendre une telle coopération.

Amitiés,
Bruno DETHOMAS

Handwritten signature consisting of a stylized 'B', a 'D', and a horizontal line with a small 'L' above it.