

COMMISSION OF THE EUROPEAN COMMUNITIES

SEC(74) 4335/2

Brussels, 20 November 1974

This document cancels and
replaces doc. SEC(74) 4335
of 6 November 1974

Applies to the D-I-N-T-E-X
versions

REPORT FROM THE COMMISSION TO THE COUNCIL

on the state of the work on the liability and protection of
officials of the European Communities in criminal matters, drawn up for
the meeting of the Council and the Conference of
the Representatives of the Governments of the Member States
- Justice Ministers (November 1974)

I. BACKGROUND

The advisability of undertaking work on the subject of the liability and protection of officials of the European Communities in criminal matters has been stressed on a number of occasions in the past by the experts of the Member States. Accordingly, a working party composed of national experts, and chaired by the Commission, began work in this field, and this led in 1972 to a Draft Convention and explanatory memorandum which were unanimously approved by the experts of the six original Member States. Following the enlargement of the Community, examination of this Draft was resumed by the national experts of the nine Member States.

II. NEED FOR THIS WORK

In the large majority of Member States, there are provisions under criminal law relating to offences which officials may commit/are liable to commit in the exercise of their duties, and also provisions to ensure their protection under criminal law.

None of these provisions apply in the case of officials of the Communities since national criminal law is only concerned with national civil servants.

This being the case, it is impossible to take action under criminal law against Community officials for certain offences, or to ensure their protection under criminal law.

These omissions must be rectified for the following reasons:

A. The disciplinary action provided for in the Staff Regulations of Officials of the European Communities (dismissal and loss of entitlement to pension) would be insufficient in a number of cases, for example:

1. where the official was acting for outside interests which agreed to compensate him in the event of his dismissal;
2. where the official had committed embezzlement or misappropriation involving a sum sufficient to make up for the consequences of dismissal and loss of entitlement to pension.

B. The authorities or private organizations in the Member States sometimes hesitate to supply confidential information to the Community institutions in the absence of penalties under criminal law to punish breaches of secrecy.

(Certain national statistical institutes have expressed reservations with respect to the communication of data to the Statistical Office of the Communities. The same objections were voiced by industrial circles at the time of the adoption of Council Regulation No. 17 of 6 February 1962 on the subject of competition).

- C. The progressive development of the Communities has led to a situation where officials of the European Communities are taking an increasing number of decisions involving a material interest (development in the activities of funds or stocks in the monetary or energy fields, for example). Since the possibility of offences such as the taking of bribes or breaches of secrecy cannot be excluded, it is increasingly necessary to have adequate means of taking action against any offending Community official.
- D. In the Member States, the public service is protected by means of disciplinary action and by penalties under criminal law.

Furthermore, the psychological impact of rectifying these omissions, connected with the freedom of officials from liability under criminal law is very important. Public opinion would indeed be shocked if, after a spectacular offence had been committed by an official of the Communities in the course of his duties, it were discovered that it was impossible to prosecute this official under criminal law, even though for the same offences national civil servants are liable under criminal law.

In addition, and in order to ensure the proper functioning of Community regulations, it is also advisable to give officials of the Communities effective protection under criminal law in respect of offences that may be committed against them in the course of their duties, similar to the protection enjoyed by national civil servants against acts of violence and resistance encountered by them in the exercise of their duties.

III. CONTENT OF THE DRAFT

To make up these deficiencies, a minimum pragmatic solution has been chosen providing, in case of need, a sufficiently effective means of action.

The solution chosen consists in treating Community officials in the same way as national civil servants as regards liability under criminal law for certain offences. The number of offences listed in the Draft Convention is very small, the offences in question being the most serious and the most prejudicial to the good name of the Communities (the taking of bribes, forgery and the use of forgery, embezzlement and misappropriation of

public funds, breach of professional secrecy). At the same time, and by the same procedure, the protection of the officials of the Communities under criminal law has also been assured.

The principal jurisdiction for the trial of an official of the Communities has been given to the courts of the official's country of origin. This solution enables the interests of the accused to be safeguarded to the fullest extent, since he will be tried in his own language, under the law of his own country, and, what is more important, he will be able, where a sentence is imposed, to serve it in an environment which will ease his reintegration into society.

Other jurisdictions have been provided for so as to allow for the optimum administration of justice and for various individual cases that might arise (offence committed outside the territory of the Communities or by officials from third countries).

It is also proposed to give power of interpretation to the Court of Justice in order to ensure that application of the rules laid down in the Draft Convention is as uniform as possible.

IV. STATE OF WORK

At its meeting held on 22 and 23 October 1974 the working group of national experts drew up the text of the draft Convention subject to one final drafting point.

The sole problem which remains to be settled by the experts relates to the question whether, when the accused person is present in the state of the infringement, the competence of that state shall be obligatory or subject to an express request addressed to the state of origin. In other words it must still be determined whether to maintain or delete that part of Article 6 paragraph 2b of the draft Convention which appears between brackets:

"If the accused person is present in the state of the place of the infringement, the state of origin shall [on request of the state of the place of the infringement] transmit the proceedings to that latter state.

.../...

The majority of delegations was inclined to accept the whole of the text as it stands: certain delegations are prepared to accept equally the proposal of one delegation to delete the words between brackets.

The Luxembourg delegation which had declared its agreement with the principles of the convention was absent from the above-meeting and was not therefore able to make any statement on the problem.

As regards the preamble one delegation equally expressed a reserve. That delegation has sought amplification and clarification of the recitals in the preamble with a view to ensuring that the provisions of the convention relating to the competence of the Court of Justice could be fully implemented.

The proposed modifications to the present text of the preamble which have already been put forward by this delegation are being closely studied by the other delegations.

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