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(Information)

COUNCIL

RESOLUTION OF THE COUNCIL AND OF THE REPRESENTATIVES OF THE GOVERNMENTS OF THE MEMBER STATES, MEETING WITHIN THE COUNCIL

of 13 November 1991

concerning the protection of the financial interests of the Communities

(91/C 328/01)

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 related 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 and *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 meantime, 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 of 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:

    1. definition of concept of fraud (levy fraud, subsidy fraud);

    2. components of offence;

    3. territorial applicability;

    4. applicable sanctions;

    5. 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 part of 1993.

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