

" POSTING OF LIAISON OFFICERS WITHIN THE EC "

Recommandation to fix the framework for the international posting of liaison officers.

The member states apply the following common principles for bilateral and multilateral agreements.

1. The purpose of the posting is the enhancement and acceleration of mutual cooperation between member states, especially by rendering assistance:
 - a. in the form of exchange of information for the sake of preventing and combatting criminality;
 - b. in complying with requests for mutual police assistance and legal assistance in criminal matters;
 - c. in the form of exchange of information for the sake of preventing or countering public order disturbances;
 - d. for the purposes of missions carried out by the authorities responsible for the control of external borders.

2. The task of the posted liaison officers is furthering the realisation of the purposes mentioned at 1 by means of giving advice and rendering support. In bilateral talks, a further specification of this task can be decided on.

3. Actions taken by the liaison officers in the performance of their duties are subjects to the laws of the member state where they are posted. The liaison officers have no authority to independently take police action. They supply information and carry out their assignments within the framework of the instructions they received from the sending state and they must comply with the directives from the receiving state. They will regularly exchange information and discuss their activities with the competent authorities of the receiving state. They shall fully cooperate in any investigation of the member state into their activities on the territory of that state, including any judicial proceedings.

4. The posting is effected at the police agency under which the liaison officers come, unless a different location would be considered more appropriate by the member states concerned after mutual consultation.

Explanatory notes to the proposal for a recommendation with regard to the international posting of liaison officers, according to paragraph 9 of the Programme of Action.

The following principal points can be deduced from analysing the answers to the questionnaire issued in the middle of 1990:

- * The posting of liaison officers to another member State can be effected only on the basis of bilateral agreements of the national authorities of the member states concerned.
- * There is a need for the possibility of posting liaison officers with a general and/or specific assignment.
- * The liaison officers do not have any operational authority.
- * The liaison officers are empowered to:
 - function in the host country as observer in operational investigations;
 - perform informative and advisory tasks;
 - exchange information in relation to preventive and repressive crime control;
 - give assistance and advice in the form of exchange of information for the sake of the maintenance of law and order;
 - assist border controlling authorities;
 - perform supportive (non-operational) duties in connection with legal assistance to police and judicial authorities in criminal cases.
- * The liaison officers with a specific assignment may, if necessary, perform duties outside their specific field of work, within the limits of such bilateral or multilateral agreements as may apply.
- * The liaison officers are liable for their actions both under civil and criminal law of the receiving state.
- * Within the limits of such bilateral or multilateral agreements as may apply, the liaison officers follow the instructions of the receiving state where they are posted. If a conflict emerges in the instructions of the receiving state and of the sending state, this will have to be solved by mutual consultations of the states involved. The liaison officers should observe the national laws of the receiving state and relevant bilateral and multilateral regulations in the performance of their duties. If there is a conflict in the legislation of the sending and receiving state, the legislation of the receiving state shall prevail.
- * The duration of the posting is determined beforehand. Posting of one liaison officer to different member states is possible.

The conclusion is that there is agreement in a broad sense on the main points: purpose of the posting, task and powers of the liaison officer and the place where he will be posted.

On the basis of the afore-mentioned analysis, the Dutch delegation has produced the attached proposal with regard to the four main points.

The basic assumption is that the posting of liaison officers for a predetermined or indeterminate period of time to another member state can be effected only on the basis of bilateral agreements between the member states concerned.

Where needed, member states can decide on the basis of multilateral agreements that the posting of liaison officer from one of these member states takes place for the sake of all states concerned.

For various reasons there is no agreement on the location where the liaison officer will be posted. If the member states have a national central police agency, it will generally be advantageous that the liaison officer will be posted there.

Where there is no central police agency, bilateral consultations should determine what the best place is from where the liaison officer can operate.

At this point no comment is made on the judicial status of the arrangement, i.e. whether it will be part of a convention in due course or whether it will be restricted to a basic agreement to apply the points mentioned as common principles.

Nota: A privacy arrangement concerning information exchanged by liaison officers is not included in this proposal. This is a very specific subject matter. It would seem practical to make arrangements for this aspect in conjunction with other privacy arrangements, to be laid down for all sorts of exchanges of information, which is decided upon within the framework of TREVI, ad-hoc group Immigration and MAG'92.

The attached arrangement reflects the common principles which the member states should take as the basis of their bilateral or multilateral agreements.

Lastly it is noted that the Netherlands submits this text as forerunner country, following consultations about the draft with the United Kingdom, Denmark and Belgium.