



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 25 August 2003**

**12078/03**

**ENFOPOL 78  
COMIX 505**

**NOTE**

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From : the Netherlands delegation  
To : Police Cooperation Working Party  
No. prev. doc. : 10965/03 ENFOPOL 63 COMIX 417  
Subject : Draft Council Resolution on security at European Council meetings and other comparable events

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1. First of all, the Netherlands delegation endorses the Presidency in putting this item again on the agenda. It is important to come to a solid system to safeguard the security at meetings of the European Council and other comparable events.

The draft Resolution focuses mainly on the border controls (art. 2-2 Schengen) and the exchange of personal data. The draft Resolution comes with some quite specific and precise recommendations, which do not fit entirely within a Resolution, basically a political and non-binding text. The Dutch delegation therefore gives in consideration to choose one of the (more binding) instruments of the EU-treaty if it is the wish to come to such provisions.

There is already a framework of legislation and case law regarding the free movements of citizens. The basic principle is the right of every citizen of the Union to travel and stay within the territory of the Member States. See Article 18 of the EC Treaty. This could be added to the preamble.

In this context, the situation that arises through activation of Article 2 (2), of the Schengen Implementation Convention is an exception to the rule. Restrictions on the rights of citizens of the Union on entry in another Member State are permitted, with respect to (national) public order, based on Directive 64/221/EEC. Refusal of entry or removal of persons is only possible in special situations. Allowances must be made in strict compliance with all safeguards, guarantees and legal remedies adjudged by Directive 64/221/EEC (OJ 56, 4.4.1964, p.850).

Although previous criminal convictions may be taken into consideration in the judgement, they do not of themselves constitute justification for taking measures in the context of public order or public safety.

2. Considering the foregoing, we recommend further specification of the text, especially as regards points 3 and 4. Furthermore, we consider it important to concretise the security measures in point 6 (i.e. refusal of entry or removal of persons from a Member State's territory). After all, increased border control is not an end in itself.

The proposed text would take on added value if the Presidency could elaborate the EU public order criteria that justify these security measures. The Netherlands would welcome such unequivocal criteria to assist them in this.

We would also like to draw your attention to the Commission's Communication (COM (1999) 372) on the special measures concerning the movement and residence of citizens of the Union which are justified on grounds of public order, public security or public health. Further, we propose that, in point 7 of the resolution, additional attention be given to Directive 95/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ L 281, 23.11.1995, p.31).

Specific exchange of information in advance of said events can be effective. The Joint Action of 26 May 1997 (OJ L 147, 5.6.1997, p.1), could be seen as a good basis for further elaboration.

If the proposed text raises the suggestion to include the data in a common list in the interests of public order, some caution is necessary.

The SIS working group is currently studying this subject (see doc. 9808/03, page 5, II.2(b)).

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