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REPORT

on the initiative of the Kingdom of the Netherlands with a view to the adoption of a Council Decision setting up a European network of contact points in respect of persons responsible for genocide, crimes against humanity and war crimes

(11658/01 – C5-0499/2001 – 2001/0826(CNS))

Committee on Citizens' Freedoms and Rights, Justice and Home Affairs

Rapporteur: Timothy Kirkhope

Symbols for procedures

- * Consultation procedure
majority of the votes cast
- **I Cooperation procedure (first reading)
majority of the votes cast
- **II Cooperation procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- *** Assent procedure
*majority of Parliament's component Members except in cases
covered by Articles 105, 107, 161 and 300 of the EC Treaty and
Article 7 of the EU Treaty*
- ***I Codecision procedure (first reading)
majority of the votes cast
- ***II Codecision procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- ***III Codecision procedure (third reading)
majority of the votes cast, to approve the joint text

(The type of procedure depends on the legal basis proposed by the Commission)

Amendments to a legislative text

In amendments by Parliament, amended text is highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). These suggested corrections are subject to the agreement of the departments concerned.

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PROCEDURAL PAGE

By letter of 16 October 2001 the Council consulted Parliament, pursuant to Article 39(1) of the EU Treaty, on the initiative of the Kingdom of the Netherlands with a view to the adoption of a Council Decision setting up a European network of contact points in respect of persons responsible for genocide, crimes against humanity and war crimes (11658/01 – 2001/0826(CNS)).

At the sitting of 22 October 2001 the President of Parliament announced that she had referred the initiative to the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs as the committee responsible (C5-0499/2001).

The Committee on Citizens' Freedoms and Rights, Justice and Home Affairs appointed Timothy Kirkhope rapporteur at its meeting of 21 November 2001.

It considered the initiative by the Kingdom of the Netherlands and the draft report at its meetings of 4 December 2001, 18 December 2001, 22 January 2002 and 20 February 2002.

At the latter it adopted the draft legislative resolution by 30 votes, with 2 abstentions.

The following were present for the vote: Ana Palacio Vallelersundi chairman; Robert J.E. Evans, Lousewies van der Laan and Giacomo Santini, vice-chairmen; Timothy Kirkhope, rapporteur; Alima Boumediene-Thiery, Giuseppe Brienza, Michael Cashman, Charlotte Cederschiöld, Gérard M.J. Deprez, Giuseppe Di Lello Finuoli, Francesco Fiori (for Marcello Dell'Utri pursuant to Rule 153(2)), Marie-Françoise Garaud (for Mario Borghezio), Evelyne Gebhardt (for Ozan Ceyhan), Jorge Salvador Hernández Mollar, Pierre Jonckheer, Margot Keßler, Eva Klant, Ole Krarup, Alain Krivine (for Fodé Sylla), Baroness Sarah Ludford, Elena Ornella Paciotti, Paolo Pastorelli (for Hartmut Nassauer), Martine Roure, Heide Rühle, Ole Sorensen (for William Francis Newton Dunn), Patsy Sörensen, Joke Swiebel, The Earl of Stockton (for Hubert Pirker), Anna Terrón i Cusí, Maurizio Turco and Gianni Vattimo (for Valter Veltroni).

The report was tabled on 20 February 2002.

The deadline for tabling amendments will be indicated in the draft agenda for the relevant part-session.

LEGISLATIVE PROPOSAL

Initiative by of the Kingdom of the Netherlands with a view to the adoption of a Council Decision setting up a European network of contact points in respect of persons responsible for genocide, crimes against humanity and war crimes (11658/01 – C5-0499/2001 – 2001/0826(CNS))

The initiative is amended as follows:

Text proposed by the Kingdom of the Netherlands¹

Amendments by Parliament

Amendment 1
Recital 8 a (new)

(8a) Close cooperation between Member States must not be to the detriment of the protection of fundamental rights, as laid down in the European Convention on Human Rights and the Charter of Fundamental Rights of the European Union, in particular Article 8 thereof concerning the protection of personal data and Chapter VI thereof concerning the right of defence.

Justification

Closer cooperation between Member States must not be detrimental to the fundamental human rights laid down in the ECHR and the Charter of Fundamental Rights of the European Union.

Amendment 2
Recital 9

Close cooperation will be enhanced if the Member States make provision for direct communication between centralised, specialised contact points.

Close cooperation will be enhanced if the Member States make provision for direct communication between centralised, specialised contact points. ***The contact points should be an office within the***

¹ OJ C 295, 20.10.2001, p. 7.

police or justice departments of the Member States and may, if appropriate, be contact points which exist for cooperation in other criminal matters.

Justification

Although it is for Member States to appoint appropriate contact points, the recitals should indicate what type of body is expected.

Amendment 3
Recital 10 a (new)

Such cooperation should be subject to adequate political and judicial control in the Member States.

Justification

National safeguards should exist until there are adequate methods at the EU level for democratic and legal control of police cooperation between the Member States.

Amendment 4
Article 1, paragraph 2

Each Member State shall notify the General Secretariat of the Council in writing of its contact point within the meaning of this Decision. The General Secretariat shall ensure that this notification is passed on to the Member States.

Each Member State shall notify the General Secretariat of the Council in writing of its contact point within the meaning of this Decision. The General Secretariat shall ensure that this notification is passed on to the Member States ***and shall publish the details in the Official Journal of the European Communities.***

Justification

To increase transparency, details of the contact points should be publicly available.

Amendment 5
Article 3, paragraph 3

A contact point may refuse to divulge information which could lead to impairment of a criminal investigation being conducted in the requested Member State or by the International Criminal Court or which, in relation to the latter, would justify invoking Article 72 of its Statute. Any refusal shall be duly explained.

A contact point may refuse to divulge information which could lead to impairment of a criminal investigation being conducted in the requested Member State or by the International Criminal Court or which, in relation to the latter, would justify invoking Article 72 of its Statute ***or could prejudice an individual's rights of defence***. Any refusal shall be duly explained.

Justification

See justification to amendment 1.

Amendment 6
Article 4, paragraph 1

Information or documents obtained under this Decision are intended to be used for the purposes laid down in Article 2(2).

Information or documents obtained under this Decision are intended to be used ***only*** for the purposes laid down in Article 2(2).

Justification

For clarification.

Amendment 7
Article 4, paragraph 3

Where a Member State wishes to use information or documents transmitted to assist investigation for the purposes referred to in Article 2(2), the transmitting Member State may not refuse its consent to such use unless it does so on the basis of restrictions under its national law or conditions referred to in Article 3(3). Any refusal to grant consent shall be duly explained.

Where a Member State wishes to use information or documents transmitted to assist investigation for the purposes referred to in Article 2(2), the transmitting Member State may not refuse its consent to such use unless it does so on the basis of restrictions under its national law or conditions referred to in Article 3(3) ***or for the protection of an individual's rights of defence***. Any refusal to grant consent shall be duly explained.

Justification

See justification to amendment 1.

Amendment 8
Article 7 a (new)

1. The Council shall inform the Parliament of the effectiveness of the network of contact points in the context of the annual debate held by the Parliament pursuant to Article 39 of the Treaty on European Union.

Justification

Information should be provided to the European Parliament.

DRAFT LEGISLATIVE RESOLUTION

European Parliament legislative resolution on the initiative by of the Kingdom of the Netherlands with a view to the adoption of a Council Decision setting up a European network of contact points in respect of persons responsible for genocide, crimes against humanity and war crimes (11658/01 – C5-0499(2001) – 2001/0826(CNS))

(Consultation procedure)

The European Parliament,

- having regard to the initiative by of the Kingdom of the Netherlands (11658/01¹),
 - having regard to Article 34(2)(c) of the EU Treaty,
 - having been consulted by the Council pursuant to Article 39(1) of the EU Treaty (C5-0499(2001)),
 - having regard to Rules 106 and 67 of its Rules of Procedure,
 - having regard to the report of the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs (A5-0036/2002),
1. Approves the initiative by of the Kingdom of the Netherlands as amended;
 2. Calls on the Council to notify Parliament should it intend to depart from the text approved by Parliament;
 3. Asks to be consulted again if the Council intends to amend the initiative by of the Kingdom of the Netherlands substantially;
 4. Instructs its President to forward its position to the Council and Commission, and the government of the Kingdom of the Netherlands.

¹ OJ C 295, 20.10.2001, p. 7.

EXPLANATORY STATEMENT

The rapporteur fully supports this initiative from the Netherlands. With the creation of ad-hoc tribunals for the prosecution of war crimes, genocide and crimes against humanity, the establishment of the International Criminal Court and national legislation with an international scope, such crimes are increasingly being investigated by the national police forces in the Member States. However, as many of these crimes have taken place outside the Member States, it may be difficult for the police forces to obtain sufficient information or to verify the accuracy of information provided. A network of contact points through which Member States can exchange information could lead to more efficient investigations in the Member States.

However, although cooperation between the police forces is welcome, such cooperation should not prejudice the protection of the human rights of individuals, and should therefore respect human rights standards for the protection of data and rights of defence.