

# EUROPEAN PARLIAMENT

1999



2004

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*Session document*

9 November 1999

FINAL  
5-0050/1999

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## REPORT

on the initiative of the Federal Republic of Germany with a view to the adoption of a Council Decision on the improved exchange of information to combat counterfeit travel documents  
(8457/1999 – C5-0011/1999 – 1999/0804(CNS))

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

Rapporteur: William Francis Newton Dunn

### ***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.)

### ***Abbreviations for committees***

- I. AFET: Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy
- II. BUDG: Committee on Budgets
- III. CONT: Committee on Budgetary Control
- IV. LIBE: Committee on Citizens' Freedoms and Rights, Justice and Home Affairs
- V. ECON: Committee on Economic and Monetary Affairs
- VI. JURI: Committee on Legal Affairs and the Internal Market
- VII. INDU: Committee on Industry, External Trade, Research and Energy
- VIII. EMPL: Committee on Employment and Social Affairs
- IX. ENVI: Committee on the Environment, Public Health and Consumer Policy
- X. AGRI: Committee on Agriculture and Rural Development
- XI. PECH: Committee on Fisheries
- XII. REGI: Committee on Regional Policy, Transport and Tourism
- XIII. CULT: Committee on Culture, Youth, Education, the Media and Sport
- XIV. DEVE: Committee on Development and Cooperation
- XV. AFCO: Committee on Constitutional Affairs
- XVI. FEMM: Committee on Women's Rights and Equal Opportunities
- XVII. PETI: Committee on Petitions

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## PROCEDURAL PAGE – CONSULTATION PROCEDURE

By letter of 21 June 1999 the Council of the European Union consulted Parliament, pursuant to Article 39(1) of the Treaty on European Union, on the initiative of the Federal Republic of Germany with a view to the adoption of a Council Decision on the improved exchange of information to combat counterfeit travel documents (8457/1999 - C5-0011/1999 - 1999/0804(CNS)).

At the sitting of 23 July 1999 the President of Parliament announced that she had referred this proposal to the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs.

At its meeting of 29 July 1999 the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs appointed Mr Newton Dunn rapporteur.

On 15 September 1999 the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs asked the Committee on Legal Affairs and the Internal Market to examine the legal basis pursuant to Rule 63(2) of the Rules of Procedure.

The Committee on Citizens' Freedoms and Rights, Justice and Home Affairs considered the initiative and the draft report at its meetings of 18 October 1999, 25 October 1999 and 9 November 1999.

At the last meeting it adopted the draft legislative resolution by 17 votes to 15.

The following were present for the vote: Watson, Chairman; Evans, vice-chairman, Newton Dunn, rapporteur; Banotti, Boumediene-Thiery, Cappato, Cashman, Cederschiöld, Ceyhun, Coelho, Cornillet, Di Pietro, Duhamel, Frahm, Gebhardt (for Terron I Cusi), Jeggle (for Buttiglione pursuant to Rule 153(2)), Kessler, Kirkhope, Klamt, Krivine (for Sylla), Lechner (for Deprez), Ludford, Lund (for Karamanou), Oostlander (for Nassauer), Paciotti, Pirker, Posselt, Roure, Schmid, Schulz, Sousa Pinto, Swibel, Turco (for Vanhecke), Valdivelso de Cue (for Hannan), Van Lancker, Vattimo and Wiebenga.

The opinion of the Committee on Legal Affairs and the Internal Market is attached.

The report was tabled on 9 November 1999.

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

## LEGISLATIVE PROPOSAL

### Initiative of the Federal Republic of Germany with a view to the adoption of a Council Decision on the improved exchange of information to combat counterfeit travel documents (8457/1999 – C5-0011/1999 – 1999/0804(CNS))

The proposal is approved with the following amendments:

Text proposed by the FRG<sup>1</sup>

Amendments by Parliament

#### (Amendment 1)

##### Title

Initiative of the Federal Republic of Germany with a view to the adoption of a Council Decision on the improved exchange of information to combat counterfeit travel documents

Initiative of the Federal Republic of Germany with a view to the adoption of a Council Regulation on the improved exchange of information to combat counterfeit travel documents

#### *Justification:*

*This amendment is necessary in order to obtain a legal basis and legal form appropriate to the priority objectives of the measure.*

#### (Amendment 2)

##### First citation

Having regard to the Treaty on European Union, and in particular Article 34(2)(c) thereof,

Having regard to the Treaty establishing the European Community, and in particular Article 63(3)(b) thereof,

#### *Justification:*

*This amendment is necessary in order to obtain a legal basis and legal form appropriate to the priority objectives of the measure.*

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<sup>1</sup> OJ C 176, 22.6.1999, p. 1

(Amendment 3)  
Recital 2b (new)

(2b) the Commission announced in its statement on this Joint Action that it would adopt the necessary initiatives to develop the European image archiving system after the entry into force of the Amsterdam Treaty;

*Justification:*

*This amendment is necessary in order to integrate this information exchange into the European image archiving system in the medium term.*

(Amendment 4)  
Recital 2c (new)

(2c) in the long term it would not be rational to allow two parallel systems for exchanging information about forged documents to remain in existence;

*Justification:*

*This amendment is necessary in order to integrate this information exchange into the European image archiving system in the medium term.*

(Amendment 5)  
Recital 2d (new)

(2d) until the adoption of a Commission proposal for a Regulation on a European image archiving system incorporating a reporting system for counterfeit travel documents, information concerning counterfeit travel documents should be exchanged among Member States, albeit largely in parallel with the FADO system;

*Justification:*

*This amendment is necessary in order to integrate this information exchange into the European image archiving system in the medium term.*

(Amendment 6)

Recital 3

(3) the improved exchange of information on counterfeit travel documents will make it possible to limit the counterfeiting of documents and thus make an effective contribution to combating crime and the smuggling of human beings;

(3) the improved exchange of information on counterfeit travel documents will make it possible to limit the counterfeiting of documents and thus make an effective contribution to combating illegal immigration, crime and the smuggling of human beings;

*Justification:*

*This amendment is necessary in order to obtain a legal basis and legal form appropriate to the priority objectives of the measure.*

(Amendment 7)

Recital 4

(4) the use of standardised information collection will facilitate and speed up the conduct of criminal proceedings;

(4) means of using information with a view to facilitating and speeding up the conduct of criminal proceedings should likewise be improved;

*Justification:*

*This amendment is necessary in order to obtain a legal basis and legal form appropriate to the priority objectives of the measure*

(Amendment 8)

Article 2(2)

2. The central unit of each Member State shall directly and without delay exchange information with the central unit of each other Member State. It shall also notify the General Secretariat of the Council.

2. The central unit of each Member State shall directly and without delay exchange information with the central unit of each other Member State. It shall also notify the General Secretariat of the Council and the Commission.

*Justification:*

*This amendment is necessary in order to integrate this information exchange into the European image archiving system in the medium term.*

(Amendment 9)  
Article 2(3) (new)

As far as possible the central units of the Member States as referred to in this Regulation and the central units of the European image archiving system shall be identical.

*Justification:*

*This amendment is necessary in order to integrate this information exchange into the European image archiving system in the medium term.*

(Amendment 10)  
Article 4

This Decision shall enter into force three months after its publication in the *Official Journal of the European Communities*.

This Regulation shall enter into force three months after its publication in the *Official Journal of the European Communities*. It shall remain in force until the adoption of a Regulation on a European image archiving system for false and authentic documents which incorporates a reporting system for the identification of counterfeit travel documents.

*Justification:*

*This amendment is necessary in order to integrate this information exchange into the European image archiving system in the medium term.*



## DRAFT LEGISLATIVE RESOLUTION

**European Parliament legislative resolution on the initiative of the Federal Republic of Germany with a view to the adoption of a Council Decision on the improved exchange of information to combat counterfeit travel documents (8457/1999 - C5-0011/1999 – 1999/0804(CNS))**

**(Consultation procedure)**

*The European Parliament,*

- having regard to the proposal by the Federal Republic of Germany (8457/1999 – 1999/0804(CNS)),
  - having been consulted by the Council pursuant to Article 39(1) of the Treaty on European Union (C5-0011/1999),
  - having regard to Rule 67 of its Rules of Procedure,
  - having regard to the report of the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs and the opinion of the Committee on Legal Affairs and the Internal Market (A5-0050/1999),
1. Approves the proposal by the Federal Republic of Germany, as amended;
  2. If the Council intends to depart from the text approved by Parliament, calls on the Council to notify Parliament;
  3. Asks to be consulted again if the Council intends to amend the proposal by the Federal Republic of Germany substantially;
  4. Instructs its President to forward its position to the Council and Commission.

## EXPLANATORY STATEMENT

### 1. Form and objectives of Germany's initiative

On 27 May 1999 the Federal Republic of Germany submitted a proposal for a Council Decision on the improved exchange of information to combat counterfeit travel documents. The Council Decision is intended to institute a reporting system for detecting counterfeit travel documents. Regrettably, Germany's initiative consists only of the actual text of the proposal for a Council Decision. Absolutely no reasons are stated, for example as to why a Council Decision was felt to be the appropriate instrument, why such an information exchange is necessary in the first place and how this initiative relates to measures already adopted (such as the European image archiving system).

The text of the Council Decision indicates that the system is intended primarily to facilitate the identification of counterfeit travel documents through visual inspections at borders. It is also intended to render searches for stolen travel documents more effective. For this purpose only non-personal details are to be exchanged concerning forgeries of travel documents which have been detected. It seems that a central unit is to be set up in each Member State. The central units would exchange information directly amongst themselves.

In exchanging information, special attention would be devoted to the document number. This is a security feature which forgers frequently neglect: forgeries produced in series often all bear the same document number or else an atypical one. It is therefore anticipated that a rapid exchange of numbers of identified forgeries will make it possible to identify further forgeries.

It is also intended that a standardised questionnaire should be used when questioning users of counterfeit documents, which is expected to provide information about forgers and particulars for use in criminal proceedings. This will involve exchanges of personal data. According to additional information supplied by the Finnish Presidency<sup>2</sup>, however, such information would not be exchanged as part of this initiative but would be arranged by means of normal requests for judicial assistance between the authorities of the Member States.

### 2. The background to the proposal

The proposal of 27 May for a Council Decision evidently has its origins in a proposal by Germany for a joint action by the Council pursuant to Article K.3 of the Treaty on European Union, based on Article K.1 (2) and (3), concerning improving exchanges of information to combat counterfeiting of travel documents – a proposal predating the entry into force of the Amsterdam Treaty (on 4 January 1999). Because of the entry into force of the Amsterdam Treaty, the Council never adopted the joint action.

The proposal for a joint action has now been converted into the present initiative, with minor changes of formulation but with virtually no changes of substance. The main differences between the two proposals are as follows: now a Council Decision is proposed, instead of a joint action, now Article 34(2)(c) is the proposed legal basis, and the standardised questionnaire, which in January was only planned, has now been drafted and incorporated in the proposal.

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<sup>2</sup> Letter from Minister for Home Affairs Häkämies of 21 September 1999

The Committee on Civil Liberties drafted a report on the proposal submitted in January, and the European Parliament adopted a resolution on it. The Committee on Civil Liberties criticised the proposed legal form of the measure (joint action), which fell within the 3<sup>rd</sup> pillar. As the measure was based on Article K.1 (2) and (3), which the Amsterdam Treaty was bringing within the scope of the EC Treaty (i.e. the 1<sup>st</sup> pillar), it seemed inappropriate to adopt an instrument under the 3<sup>rd</sup> pillar so shortly before the entry into force of the Amsterdam Treaty. Parliament therefore adopted amendments restricting the validity of the joint action to 12 months and called on the Commission to draft a proposal for a Regulation within 3 months of the entry into force of the Amsterdam Treaty.

### 3. The legal form and legal basis of the present proposal

The Federal Republic of Germany clearly did not heed the European Parliament's call for a Regulation. Instead it proposes a Council Decision pursuant to Article 34(2)(c) of the Treaty on European Union. Article 34 forms part of Title VI, 'Provisions on police and judicial cooperation in criminal matters'.

This is quite astonishing, given that, as already mentioned, the previous initiative of January 1999 concerned a joint action pursuant to Article K.3 of the Treaty on European Union and was explicitly based on what was then Article K.1 (2) and (3). Paragraph 2 of this article referred to rules governing the crossing by persons of the external borders of the Member States and the exercise of controls thereon, paragraph 3 to immigration policy and policy regarding third-country nationals, including combating unauthorised immigration and residence. The Amsterdam Treaty has transferred these policies to Title IV, 'Visas, asylum, immigration and other policies related to free movement of persons'.

Against this background, it is therefore necessary to consider what the main objectives of this measure are, and hence which legal basis is appropriate. Your rapporteur takes the view that the identification of counterfeit travel documents through their inspection is primarily intended to prevent illegal immigration. While the field of police cooperation is also relevant, particularly as regards improving the effectiveness of searches for these travel documents, it cannot be regarded as the primary objective of the measure. Accordingly, Article 63 of the EC Treaty seems the more appropriate legal basis, since it includes the following provision:

'The Council, acting in accordance with the procedure referred to in Article 67, shall, within a period of five years after the entry into force of the Treaty of Amsterdam, adopt:

... (3) measures on immigration policy within the following areas:

... (b) illegal immigration and illegal residence, ...'

Article 66 supplements this:

'The Council, acting in accordance with the procedure referred to in Article 67, shall take measures to ensure cooperation between the relevant departments of the administrations of the Member States in the areas covered by this Title, as well as between those departments and the Commission.'

Article 67 lays down that, during the five years following the entry into force of the Amsterdam Treaty, the Council shall act unanimously on a proposal from the Commission or on the initiative of a Member State and after consulting the European Parliament.

The objectives of the measure can therefore appropriately be achieved by means of a legal basis in Title IV, i.e. in the first pillar of the Treaty. Accordingly, the measure should be adopted in the form of a Regulation. The Commission has likewise expressed this view to the Council and the European Parliament.

#### 4. Germany's initiative and the European computerised image archiving system (FADO)

In stating its reasons for the January initiative, the Federal Republic of Germany observed that the proposed information system was needed particularly until the European computerised image archiving system (FADO)<sup>3</sup> instituted by the Council on 3 December 1998 became fully operational. Both measures do indeed have similar aims, which they pursue in similar ways. Both serve to facilitate the identification of forged travel documents during inspection by means of exchanges of information. Images of forged and falsified documents and of authentic documents, together with brief information about forgery techniques and security techniques, will first be fed into the FADO system. Information will be exchanged electronically. The information exchange provided for by Germany's initiative particularly concerns information about counterfeit travel documents and the document number of the travel document. Both systems provide for the setting-up of central units.

The close connection, indeed overlapping, between the aims of the two systems is obvious. In the long run therefore there is little point in setting up two independent systems. As the decision on the FADO system was taken before the Amsterdam Treaty entered into force, it still in any case needs to be 'Amsterdamised'. The Commission made a written statement to this effect when the joint action was adopted and undertook to take the necessary initiatives to develop the system further after the entry into force of the Amsterdam Treaty.

It therefore seems sensible to introduce the two systems in parallel from the start and incorporate at least the core area of the present proposal concerning improving the exchange of information to combat counterfeiting of travel documents into the further developed FADO system to be proposed by the Commission.

#### 5. Conclusions

It is incontestably necessary to combat counterfeiting of documents, and this is certainly a field in which cooperation and exchanges of information at European level can result in success. The aims of Germany's initiative therefore deserve every support.

Until the Amsterdam Treaty entered into force, combating document forgery was regarded as part of the field of provisions relating to crossing of the external borders and immigration policy. Measures relating to it were adopted on legal bases which reflected this situation, and practical cooperation was organised in the same context (Council working groups, Odysseus programme, etc.). There is no good reason why this should change on account of the Amsterdam Treaty, since Article 63(3)(b) of the latter provides an appropriate legal basis.

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<sup>3</sup> OJ L 333, 9.12.1998, p. 4

Like many of the fields previously assigned to the 3<sup>rd</sup> pillar, cooperation within the European Union in relation to forged documents is organised at various levels (EU, Schengen) and often in a very partial manner. Admittedly, this cannot immediately be remedied with the existing structures, but the situation ought at least to be kept in check to the extent of not setting up in the medium term two parallel systems to exchange individual data on false and authentic documents. The forthcoming ‘Amsterdamisation’ of the European image archiving system presents an opportunity to make sure of this.

30 September 1999

**OPINION**

(Rule 147 of the Rules of Procedure)

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

on the legal basis of the initiative of the Federal Republic of Germany with a view to the adoption of a Council Decision on the improved exchange of information to combat counterfeit travel documents (8457/1999 – C5-0011/1999 – 1999/0804(CNS))

(report by Mr Newton Dunn)

Committee on Legal Affairs and the Internal Market

Letter from the committee chairman to Mr Watson, chairman of the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs

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Brussels, 29 September 1999

Dear Mr Watson,

Following the request contained in your letter of 15 September 1999 and pursuant to Rule 63 of the Rules of Procedure, the Committee on Legal Affairs and the Internal Market considered the above subject, as a matter of urgency, at its meeting of 21, 22 and 23 September 1999.

The Legal Affairs Committee considered whether the measure as proposed in the initiative in question should be adopted on the basis of a procedure laid down in the EU Treaty or on the basis of a procedure laid down in the EC Treaty.

The EC Treaty (Articles 61 to 64) concerns Community measures in limited fields such as the crossing of internal borders by third country nationals, the crossing of external borders (procedures to be followed in carrying out checks), rules on visas (for example, a uniform format for visas), and measures on asylum, refugees and immigration policy.

The EU Treaty, on the other hand, is more specific with regard to common action in the field of police co-operation, which covers, inter alia:

- 'operational co-operation between the competent authorities, including the police, customs and other specialised law enforcement services of the Member States in relation to the prevention, detection and investigation of criminal offences' (Article 30(1)(a) of the EU Treaty) and

- ‘the collection, storage, processing, analysis and exchange of relevant information...’ (Article 30(1)(b) of the EU Treaty).

Common action on judicial co-operation in criminal matters aims inter alia to ‘facilitate and accelerate co-operation between competent ministries and judicial and equivalent authorities of the Member States in relation to proceedings and the enforcement of decisions’ (Article 31(a) of the EU Treaty).

Article 34 lists the legal instruments which may be used to contribute to the pursuit of the objectives of the Union. In particular, the Council may ‘adopt **decisions** for any other purpose consistent with the objectives of this Title, excluding any approximation of the laws and regulations of the Member States. These decisions shall be binding and shall not entail direct effects.’

The **aim** of the German initiative is to combat a criminal activity, counterfeiting. This aim is pursued by the following **means** coming within the field of police and judicial co-operation:

- the exchange, of information collected directly and without delay, between the central units of the Member States, using a standard form;
- transmission by a Member State to the other Member States (using another standard form) of data relating to counterfeit travel documents which is required for criminal proceedings.

The German Initiative makes no reference to the specific matters listed in Articles 61 to 64 of the EC Treaty. In fact, **as formulated** by the Federal Republic of Germany, this initiative embodies measures the scope of which extends beyond the field of immigration policy referred to in Article 63(3)(b) of the EC Treaty and therefore clearly comes within the field covered by Title VI of the Treaty on European Union. This does not, however, prevent Community measures on the collection and exchange of information from being adopted in the fields laid down in Articles 61 to 64 of the EC Treaty pursuant to the procedures laid down in those articles.

The Committee on Legal Affairs and the Internal Market unanimously decided that the legal basis indicated by the Council, Article 34(2)(c) of the Treaty on European Union, was appropriate<sup>4</sup>.

For the sake of clarity, that legal basis could be supplemented by a reference to Articles 30(1)(a) and (b) of the Treaty on European Union, Article 31 (a) of the Treaty on European Union and Article 34(2)(c) of the Treaty on European Union.

(Closing formula and signature)

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<sup>4</sup> The following were present for the vote: Palacio Vallelersundi, chairman ; Wieland, second vice-chairman, Beysen, third vice-chairman ; Miller, Medina Ortega, Koukiadis, Manders, Uca, Doorn, Lehne, Grossetête and Harbour.