

# EUROPEAN PARLIAMENT

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## **REPORT**

on the initiative by the Kingdom of Belgium with a view to the adoption of a Council Decision setting up a European network of national contact points for restorative justice  
(11621/2002 – C5-0467/2002 – 2002/0821(CNS))

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

Rapporteur: Eva Klant

### ***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 3 October 2002 the Council consulted Parliament, pursuant to Article 39(1) of the EU Treaty, on the initiative by the Kingdom of Belgium with a view to the adoption of a Council Decision setting up a European network of national contact points for restorative justice (11621/2002 – 2002/0821(CNS)).

At the sitting of 9 October 2002 the President of Parliament announced that he had referred the initiative to the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs as the committee responsible and to the Committee on Legal Affairs and the Internal Market, the Committee on Culture, Youth, Education, the Media and Sport and the Committee on Women's Rights and Equal Opportunities for their opinions (C5-0467/2002).

The Committee on Citizens' Freedoms and Rights, Justice and Home Affairs appointed Eva Klant rapporteur at its meeting of 11 November 2002.

It considered the initiative and the draft report at its meetings of 20 January, 17 February and 19 March 2003.

At its meeting of 20 January 2003 it decided to ask the Committee on Legal Affairs and the Internal Market for its opinion on the legal basis of the initiative, pursuant to Rule 63(2) of the Rules of Procedure.

At the last meeting it adopted the draft legislative resolution unanimously.

The following were present for the vote: Jorge Salvador Hernández Mollar (chairman), Robert J.E. Evans (vice-chairman), Eva Klant (rapporteur), Mary Elizabeth Banotti, Johanna L.A. Boogerd-Quaak, Alima Boumediene-Thiery, Giuseppe Brienza, Kathalijne Maria Buitenweg (for Pierre Jonckheer), Charlotte Cederschiöld, Carmen Cerdeira Morterero, Ozan Ceyhan, Carlos Coelho, Thierry Cornillet, Gérard M.J. Deprez, Giuseppe Di Lello Finuoli, Ewa Hedkvist Petersen (for Michael Cashman), Anna Karamanou (for Adeline Hazan), Margot Keßler, Timothy Kirkhope, Alain Krivine (for Ole Krarup), Jean Lambert (for Heide Rühle), Baroness Sarah Ludford, Marjo Matikainen-Kallström (for The Lord Bethell), Hartmut Nassauer, Bill Newton Dunn, Marcelino Oreja Arburúa, Elena Ornella Paciotti, Paolo Pastorelli (for Marcello Dell'Utri), Hubert Pirker, Bernd Posselt, Ingo Schmitt (for Timothy Kirkhope), Ilka Schröder, Patsy Sørensen, María Sornosa Martínez (for Sérgio Sousa Pinto), Joke Swiebel, Anna Terrón i Cusí, Christian Ulrik von Boetticher and Olga Zrihen Zaari (for Walter Veltroni).

The opinion of the Committee on Legal Affairs and the Internal Market on the legal basis and the opinion of the Committee on Women's Rights and Equal Opportunities are attached; the Committee on Culture, Youth, Education, the Media and Sport and the Committee on Legal Affairs and the Internal Market decided on 12 November and 3 December 2002 respectively not to deliver an opinion.

The report was tabled on 24 March 2003.

## DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

**on the initiative by the Kingdom of Belgium with a view to the adoption of a Council Decision setting up a European network of national contact points for restorative justice (11621/2002 – C5-0467/2002 – 2002/0821(CNS)) (Consultation procedure)**

*The European Parliament,*

- having regard to the initiative by the Kingdom of Belgium (11621/2002)<sup>1</sup>,
  - having regard to the Treaty on European Union and, in particular, Article 31(1)(a) and (c) and Article 34(2)(c) thereof,
  - having regard to Article 39(1) of the EU Treaty, pursuant to which the Council consulted Parliament (C5-0467/2002),
  - having regard to the opinion of the Committee on Legal Affairs and the Internal Market on the proposed legal basis,
  - 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 and the opinion of the Committee on Women's Rights and Equal Opportunities (A5-0084/2003),
1. Approves the initiative by the Kingdom of Belgium as amended;
  2. Calls on the Council to amend the text of the initiative accordingly;
  3. Calls on the Council to notify Parliament if it intends to depart from the text approved by Parliament;
  4. Calls on the Council to consult Parliament again if it intends to amend the initiative by the Kingdom of Belgium substantially;
  5. Instructs its President to forward its position to the Council and Commission and the Government of the Kingdom of Belgium.

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<sup>1</sup> OJ C 242E, 8.10.2002, p. 20

Amendment 1  
Title

Initiative of the Kingdom of Belgium with a view to the adoption of a Council Decision setting up a European network of national contact points for restorative justice

Initiative of the Kingdom of Belgium with a view to the adoption of a Council Decision setting up a European network of national contact points for **mediation in criminal cases and** restorative justice

*Justification*

*Even if the doctrine on restorative justice presumes a wider scope, the reality is that, up to now, this has been confined to various forms of mediation.*

*Article 10 of the Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings regulates mediation in criminal cases as part of criminal proceedings in a novel way, imposing an obligation on the Member States to adopt the necessary legal provisions for its implementation by 22 March 2006 at the latest.*

*The title of the proposed decision should be amended for both these reasons, so as to give the clearest possible idea of the content and purpose of the decision.*

Amendment 2  
Recital 1

***(1) Recommendation No R(85)11 of the Committee of Ministers of the Council of Europe on the position of the victim in the framework of criminal law and procedure of 28 June 1985 recommends the governments of the Member States to examine the possible advantages of mediation and conciliation schemes.***

***deleted***

*Justification*

*The purpose of the recitals is to put forward reasons to justify the following articles without reproducing them.*

*This recital is general in nature and its purpose appears to be to provide a generic*

*justification for the genesis of the present initiative.*

*Nevertheless, the true general motivation which can justify the genesis of this initiative is the desirability of legislating on the matter in order to guarantee that the Member States duly fulfil the obligations flowing from EU legislative acts in force, as well as to act on the political resolve shown at the Tampere European Council, among others.*

Amendment 3  
Recital 1 a (new)

***(1a) There are international instruments encouraging the adoption by State governments of measures for the resolution of disputes which facilitate conciliation and redress for victims, and which promote among offenders a sense of responsibility towards society as a whole and towards the victim.***

*Justification*

*Reference is made to the existence of international instruments in this field in a very generic way, without going into explicit detail.*

Amendment 4  
Recital 2

***(2) The United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power of 29 November 1985 calls for the use, where appropriate, of informal mechanisms for the resolution of disputes, including mediation, arbitration and customary justice or indigenous practices to facilitate conciliation and redress for victims.*** *deleted*

*Justification*

*See Amendment 2 to recital 1.*

Amendment 5  
Recital 3

**(3) Recommendation No R(87)21 of the Committee of Ministers of the Council of Europe on assistance to victims and the prevention of victimisation of 17 September 1987 recommends the governments of the Member States to encourage experiments, whether on a national or a local basis, in mediation between the offender and his victim and evaluate the results with particular reference to how far the interests of the victim are served.** *deleted*

*Justification*

*See Amendment 2 to Recital 1.*

Amendment 6  
Recital 4

**(4) The 1990 United Nations Minimum Rules for non-custodial measures stress the importance of greater community involvement in the management of criminal justice and the need to promote among offenders a sense of responsibility towards their victims and towards society as a whole.** *deleted*

*Justification*

*See Amendment 2 to recital 1.*



Amendment 7

Recital 5

***(5) Recommendation No R(92)16 of the Committee of Ministers of the Council of Europe on the European Rules on Community Sanctions and Measures considers that sanctions and measures whose enforcement takes place in the community constitute important ways of combating crime and to avoid negative effects of imprisonment.*** ***deleted***

*Justification*

*See Amendment 2 to recital 1.*

Amendment 8

Recital 6

(6) The *Vienna* Action Plan, in point 19 thereof, states that "Procedural rules should respond to broadly the same guarantees, ensuring that people will not be treated unevenly according to the jurisdiction dealing with their case".

(6) The Action Plan *of the Council and the Commission on how best to implement the provisions of the Treaty of Amsterdam on an area of freedom, security and justice, adopted by the Justice and Home Affairs Council of 3 December 1998<sup>1</sup>*, in point 19 thereof, states that "Procedural rules should respond to broadly the same guarantees, ensuring that people will not be treated unevenly according to the jurisdiction dealing with their case". ***It appears useful, however, to complement those basic principles by standards and codes of good practice in areas of transnational relevance and common concern (e.g. interpretation) which may also extend to certain parts of the enforcement of criminal decisions, including, for instance, confiscation of assets and to aspects of offender reintegration and victim support***".

<sup>1</sup>*OJ C 019, 23.01.1991, p. 1.*

*Justification*

*The title of the commonly known ‘Vienna Action Plan’ should be given more correctly, at least when it first appears in the legislative text.*

*It is also very important to insert the second part of point 19 of the Action Plan, since it provides significant justification for the substance of the legislative initiative.*

Amendment 9  
Recital 7

***(7) The Resolution 1999/26 of  
28 July 1999 of the Economic and Social  
Council of the United Nations on  
Development and implementation of  
mediation and restorative justice  
measures in criminal justice calls upon  
the States, international organisations  
and other entities to exchange  
information and experience on mediation  
and restorative justice.*** *deleted*

*Justification*

*See Amendment 2 to recital 1.*

Amendment 10  
Recital 9

***(9) Recommendation No R(99)19 of the  
Committee of Ministers of the Council of  
Europe concerning mediation in penal  
matters sets out principles for the Member  
States to consider when developing  
mediation in penal matters.*** *deleted*

*Justification*

*See Amendment 2 to recital 1.*

Amendment 11

Recital 10

(10) The Tampere European Council of 15 and 16 October 1999 determined in the Conclusion 30 that alternative, extra-judicial procedures should be created by the Member States.

(10) The Tampere European Council of 15 and 16 October 1999 determined in the Conclusion 30 that alternative, extra-judicial procedures should be created by the Member States ***and in conclusion 32 that national programmes should be set up to finance measures, public and non-governmental, for assistance to and protection of victims.***

*Justification*

*Conclusion 32 of the Tampere European Council also provides significant elements of political support for the legislative proposal.*

Amendment 12

Recital 11

***(11) Resolution 2000/14 of 27 July 2000 of the Economic and Social Council of the United Nations on Basic Principles on the use of Restorative Justice Programmes in Criminal Matters calls upon the States to continue to exchange information and experience on mediation and restorative justice.***

*deleted*

*Justification*

*See Amendment 2 to recital 1.*

Amendment 13

Recital 13

(13) Council Framework Decision 2001/220/JHA of 15 March 2001 on the standing of victims in criminal

(13) Council Framework Decision 2001/220/JHA of 15 March 2001 on the standing of victims in criminal

proceedings<sup>1</sup> states in Article 10 that Member States are to seek to promote mediation in criminal cases for offences which they consider appropriate for this sort of measures and to ensure that any agreement between the victim and the offender reached in course of such mediation in criminal cases can be taken into account. According to Article 17 thereof each Member State shall bring into force laws, regulations and administrative provisions to comply with the said Article 10 before 22 March of the year 2006.

proceedings<sup>2</sup> states in Article 10 that Member States are to seek to promote mediation in criminal cases for offences which they consider appropriate for this sort of measures and to ensure that any agreement between the victim and the offender reached in course of such mediation in criminal cases can be taken into account. According to Article 17 thereof each Member State shall bring into force laws, regulations and administrative provisions to comply with the said Article 10 before 22 March of the year 2006.

***Article 12 of that Decision provides that the Member States are to foster, develop and improve cooperation between Member States in order to facilitate the more effective protection of victims' interests in criminal proceedings, whether in the form of networks directly linked to the judicial system or of links between victim support organisations.***

#### *Justification*

*It is vital to mention Article 12 of the above Framework Decision, since it directly affects the matters covered by the initiative and has been in force since 22 March 2002.*

#### Amendment 14 Recital 13 a (new)

***(13a) The Council, in Decision 2002/630/JHA of 22 July 2002<sup>1</sup>, established the single framework programme AGIS to replace the previous programmes Grotius II – Criminal, Stop II, Oisin II, Hippokrates and Falcone, in response to the call expressly made by the European Parliament and the Council, which will make it possible to strengthen and improve cooperation between the***

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<sup>1</sup> OJ L 82, 22.3.2001, p. 1.

<sup>2</sup> OJ L 82, 22.3.2001, p. 1.

*police and judiciary in the Member States and to improve mutual understanding of their police, judicial, legal and administrative systems.*

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<sup>1</sup>*OJ L 203, 1.8.2002, p. 5.*

*Justification*

*The financial reference amount for the implementation of the AGIS programme for the period 2003 to 2007 will be EUR 65 million. This is potentially a highly significant element which may help achieve the objectives sought by the present initiative.*

Amendment 15  
Recital 13 b (new)

***(13b) In Article 2(1)(b) of Decision 2002/630 JHA establishing a framework programme on police and judicial cooperation in criminal matters (AGIS), the objectives are described as being to promote and strengthen networking, cooperation on general subjects of common interest to the Member States, the exchange and dissemination of information, experience and best practice, local and regional cooperation, and the improvement and adaptation of training and technical and scientific research; Article 2(2)(d) of that Decision lays down that the programme shall support, inter alia, projects linked to cooperation between Member States to achieve effective protection of the interests of victims in criminal proceedings.***

*Justification*

*See Amendment 1 and recital 13a (new).*

Amendment 16  
Recital 13 c (new)

***(13c) In order to facilitate and accelerate effective judicial cooperation between the Member States in criminal matters as regards cases and the implementation of decisions through mediation and other restorative justice practices, as well as to ensure compatibility between the rules applicable to the extent necessary to improve such cooperation, it is necessary to set up the European network of contact points for mediation in criminal cases and restorative justice.***

*Justification*

*The text itself justifies the need to set up the network.*

Amendment 17  
Recital 14

***(14) The initiative of the French Republic and the Kingdom of Sweden to set up a European crime prevention network, which resulted in Decision 2001/427/JHA<sup>1</sup> are excellent examples of how the Member States can cooperate on a stable basis on certain topics. The inclusion of mediation with juveniles and social mediation in the first working programme of the European crime prevention network proves the growing interest in alternative ways of exercising criminal law.***

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<sup>1</sup> OJ L 153, 8.6.2001, p. 1.

***(14) Council Decision 2001/427/JHA<sup>1</sup> of 28 May 2001 set up a European crime prevention network with which the European network of national contact points for mediation in criminal cases and restorative justice must maintain privileged relations. For that purpose, it is important to locate the Secretariat of the European network of national contact points for mediation in criminal cases and restorative justice within the Secretariat of the European crime prevention network.***

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<sup>1</sup> OJ L 153, 8.6.2001, p. 1.

*Justification*

*In order to benefit from synergies and reduce the operating costs of the European network for*

*mediation and restorative justice, its Secretariat should be located within the existing Secretariat of the European crime prevention network.*

Amendment 18  
Recital 14 a (new)

***(14a) In order to guarantee that the aims of the European network for mediation in criminal matters and restorative justice are achieved, it is necessary for the rules on setting up the network to be laid down by a binding legal instrument of the European Union.***

*Justification*

*Self-explanatory.*

Amendment 19  
Recital 15 b (new)

***(15b) Whereas restorative justice appropriately implemented can assist with community capacity building in order for communities to show a better involvement in the safety of society, especially women and children.***

Amendment 20  
Recital 16 a (new)

***(16a) It is necessary to involve society as a whole in the development of a partnership between national, local and regional public authorities, non-governmental organisations, the private sector and the public with the aim of dealing with the causes and consequences of crime, which are manifold and which must consequently be resolved by applying measures at different levels, in different social groups, in association with***

***interlocutors who have a range of skills and experience, including civil society.***

*Justification*

*It is necessary to overcome the old structures which have been in existence since the end of the 18th century in everything relating to criminal law and to open up new paths in which victims' needs are paramount and offender accountability is emphasised in a positive manner. If this objective is to be achieved, however, it is vital to gain the cooperation of the whole of society, from the judicial and police authorities involved, penal institutions, support services for people on parole and victim support services to offenders and victims and, finally, the public and society as a whole.*

Amendment 21  
Recital 16 b (new)

***(16b) It is necessary to make the European network of national contact points for mediation in criminal cases and restorative justice accessible to the candidate countries for accession to the European Union.***

*Justification*

*Self-explanatory.*

Amendment 22  
Recital 16 c (new)

***(16c) Provision needs to be made for regular monitoring and assessment of the activities and functioning of the network to facilitate the evaluation of its effectiveness in the light of its objectives, and with a view to proposing any appropriate adjustments and any necessary modifications.***



*Justification*

*Self-explanatory.*

Amendment 23

Recital 17

(17) This initiative was taken in consultation with the European Forum for Victim-Offender Mediation and Restorative Justice, a non-governmental organisation experienced in the field of restorative justice,

(17) This initiative was taken in consultation with the European Forum for Victim-Offender Mediation and Restorative Justice, a non-governmental organisation experienced in the field of restorative justice. ***There are other non-governmental organisations in the Member States of the Union, carrying out comparable significant work, which are of importance for the implementation of this Decision and for the cooperation of Member States.***

Or. de

*Justification*

*It is important to refer to cooperation with non-governmental organisations whose work is problem-centred. It should be pointed out that similar non-governmental organisations are also carrying out comparable work in other Member States of the Union.*

Amendment 24

Article 1, paragraph 1

1. A European network of national contact points for restorative justice, (hereinafter referred to as "the network"), is hereby set up.

1. A European network of national contact points for ***mediation in criminal cases and*** restorative justice, (hereinafter referred to as "the ***European network for mediation and restorative justice***"), is hereby set up.

*Justification*

*See Amendment 1 to the title.*

Amendment 25  
Article 1, paragraph 2

2. **Network** national representatives shall ensure the proper functioning of the network in accordance with this Decision.

2. National representatives **of the European network for mediation and restorative justice and a Secretariat** shall ensure the proper functioning of the network in accordance with this Decision.

*Justification*

*See Amendment 1 to the title.*

*It is also difficult to see how the network could operate without a Secretariat.*

Amendment 26  
Article 2

For the purpose of this Decision, restorative justice refers to a comprehensive view of the criminal justice process, in which the needs of the victim are prioritised and offender accountability is emphasised in a positive manner **and covers a body of ideas that is relevant to various forms of sanctioning and conflict handling in the successive stages of or in connection with the criminal justice process.**

For the purpose of this Decision, restorative justice refers to a comprehensive view of the criminal justice process, in which the needs of the victim are prioritised and offender accountability is emphasised in a positive manner.

*Justification*

*The last part of this article is deleted because it is a political declaration of intent without any binding legal value, which is essentially contrary to the content which the provisions of a decision must have, since such provisions must be geared directly to their purpose and must*

*be legally enforceable.*

#### Amendment 27

##### Article 3

3. The network shall contribute to developing, supporting and promoting the various aspects of restorative justice within the Member States as well as at the European Union level. ***For this objective, legislative and logistic support to criminal justice authorities is an important instrument.***

3. The ***European network for mediation and restorative justice*** shall contribute to developing, supporting and promoting ***mediation in criminal cases and*** the various aspects of restorative justice within the Member States as well as at the European Union level.

#### *Justification*

*See Amendment 1 to the title.*

#### Amendment 28

##### Article 4, introductory sentence and point (a)

With a view to achieving the objective of Article 3, the network shall have in particular the following tasks and activities and consequently it shall:

(a) ***be an information point. To that end, the network shall*** collect, analyse and evaluate information and data on existing restorative justice ***practices*** and on their development in the Member States, in order to contribute to the development of standards of best practices and to support future national and European initiatives. The Network shall also assist the Council and Member States with questionnaires on restorative justice ***practices***;

With a view to achieving the objective of Article 3, the ***European network for mediation and restorative justice*** shall have in particular the following tasks and activities and consequently it shall:

(a) collect, analyse and evaluate information and data on existing ***practices as regards mediation in criminal cases and*** restorative justice and on their development in the Member States, in order to contribute to the development of standards of best practices and to support future national and European initiatives. The Network shall also assist the Council and Member States with questionnaires on ***practices as regards mediation in criminal cases and*** restorative justice;

#### *Justification*

*See Amendment 1 to the title. The formal aspect of the text has also been reworded to avoid repetition.*

Amendment 29  
Article 4, point (b)

(b) develop mechanisms to distribute and to make available the abovementioned information and data to authorities on a national, regional, European and international level and to other governmental or non-governmental organisations, groups, networks or forums working in or interested in the field of restorative justice;

(b) develop mechanisms to distribute and to make available the abovementioned information and data to authorities on a national, regional, European and international level and to other governmental or non-governmental organisations, groups, networks or forums working in or interested in the field of ***mediation in criminal cases and*** restorative justice;

*Justification*

*See Amendment 1 to the title and Amendment 28 to Article 4a.*

Amendment 30  
Article 4, point (c)

(c) facilitate mutual exchange of information, experience and contacts between European, regional, national and local authorities, institutions, agencies, groups, networks and individuals concerned with the topic of restorative justice;

(c) facilitate mutual exchange of information, experience and contacts between European, regional, national and local authorities, institutions, agencies, groups, networks and individuals concerned with the topic of ***mediation in criminal cases and*** restorative justice;

*Justification*

*See Amendment 1 to the title and Amendment 28 to Article 4a.*

Amendment 31  
Article 4, point (d)

(d) promote research on the topic of restorative justice and to that aim the network shall contribute to identify and develop the main areas for research in the field of restorative justice;

(d) promote research on the topic of restorative justice and to that aim the network shall contribute to identify and develop the main areas for research in the field of ***mediation in criminal cases and*** restorative justice;

*Justification*

*See Amendment 1 to the title and Amendment 28 to Article 4a.*

Amendment 32  
Article 4, point (e)

(e) contribute to identify and develop the main areas for training and evaluation in the field of restorative justice;

(e) contribute to identifying and developing the main areas for training and evaluation in the field of ***mediation in criminal cases and*** restorative justice; ***particularly in those areas in which most victims are women;***

*Justification*

*See Amendment 1 to the title and Amendment 28 to Article 4a. Emphasis should be placed on women as the main victims.*

Amendment 33  
Article 4 e) (a) (new)

***4 e)(a) . Contribute to informing and influencing justice policies regarding restorative justice options through the preparation of recommendations about restorative justice policies and practices, including the role of government in community capacity-building.***

Amendment 34

Article 4, point (f)

(f) organise conferences, seminars, meetings and other activities to promote restorative justice *practices* and to stimulate and improve the exchange of experience and best practices;

(f) organise conferences, seminars, meetings and other activities to promote *practices as regards mediation in criminal cases and* restorative justice and to stimulate and improve the exchange of experience and best practices;

*Justification*

*See Amendment 1 to the title and Amendment 28 to Article 4a.*

Amendment 35

Article 4, point (g)

(g) develop cooperation with applicant countries, third countries and international organisations and bodies;

(g) develop cooperation with applicant countries, third countries and international organisations and bodies *in the fields of mediation in criminal cases and restorative justice*;

*Justification*

*See Amendment 1 to the title and Amendment 28 to Article 4a.*

Amendment 36

Article 4 g) (a) (new)

***4 g) (a) Develop specialised measures of restorative justice for migrant women, in which due attention would be paid to their cultural background.***

Amendment 37

Article 4, point (h)

(h) provide its expertise to the European Parliament, the Council and to the Commission where necessary and upon

(h) provide its expertise to the European Parliament, the Council and to the Commission where necessary and upon

request, with a view to assisting them in matters concerning restorative justice;

request, with a view to assisting them in matters concerning **mediation in criminal cases and** restorative justice;

*Justification*

*See Amendment 1 to the title and Amendment 28 to Article 4a.*

Amendment 38

Article 4, point (i) and final paragraph

(i) report to the Council on its activities each year, through **the competent working bodies**, and indicate the areas for priority action in its working program for the following year. The Council shall take note of and endorse the report and forward it to the European Parliament.

(i) report to the Council on its activities each year, through **its Secretariat**, and indicate the areas for priority action in its working program for the following year. The Council shall take note of and endorse the report and forward it to the European Parliament.

***The concrete interpretation, fulfilment and development of the tasks and activities mentioned in this article will be subject to and will depend on the voluntary contributions of the Member States.***

*Justification*

*It should be specified that the Secretariat will be responsible for forwarding these important reports to the Council.*

*The interpretation, fulfilment and development of the network's tasks cannot be left to the whim of the individual Member States, since under these circumstances it would not be able to operate or achieve the objectives sought on a Europe-wide scale.*

Amendment by Eva Klamt

Amendment 39

Article 5

***Because of the inherent community orientation and the grass-root level of the***

The ***European network for mediation and restorative justice*** shall, in performing its

***restorative justice development***, the network shall, in performing its tasks and activities as described in the Article 4, pay in particular attention to the cooperation and the stimulation of exchanges with non-governmental organisations working in the field of restorative justice. ***To enable the network to achieve its aims in the most efficient and valuable way, the network can decide to call upon the know-how and experience of those non-governmental organisations working in the field of restorative justice and even decide to cooperate in a more structured way.***

tasks and activities as described in the Article 4:

***(a) pay in particular attention to the cooperation and the stimulation of exchanges with non-governmental organisations working in the field of mediation in criminal cases and restorative justice; for some of its tasks and activities the European network for mediation and restorative justice can decide to call upon the assistance by non-governmental organisations specialised in this field;***

***(b) work closely, through the contact points, with local authorities and interlocutors, and with research institutions and non-governmental organisations working in the field of restorative justice;***

***(c) set up and maintain a website which shall contain its regular reports and any other useful information, in particular a compilation of best practices;***

***(d) be responsible for using and promoting the results of projects directly linked to the application of mediation in criminal cases, and other forms of restorative justice, financed through Union programmes concerning police and judicial cooperation in criminal matters.***

Or. en

#### *Justification*

*See Amendment 1 to the title. The rest is self-explanatory.*



*Because of economy reasons, the know-how, information and experience in this field should not be re-invented, if already available; moreover, Article 12 of the Council Framework Decision 2001/220/JHA of 15 March 2001 also promotes networking not directly linked to the judicial system.*

Amendment 40  
Article 6, paragraph 1

1. The network shall consist of contact points designated by each Member State. The **Commission and** candidate countries for accession to the European **Communities** may also designate a contact point.

1. The **European network for mediation and restorative justice** shall consist of contact points designated by each Member State. The candidate countries for accession to the European **Union** may also designate a contact point.

*Justification*

*See Amendment 1 to the title. Furthermore, the candidate countries are to accede to the European Union, of which the European Communities form a part.*

Amendment 41  
Article 6, paragraph 3

3. These contact points shall include at least one representative from the national authorities competent for restorative justice in its many aspects.

3. These contact points shall include at least one representative from the national authorities competent for **mediation in criminal cases and** restorative justice in its many aspects.

*Justification*

*See Amendment 1 to the title.*

Amendment 42  
Article 6, paragraph 4

4. Members States may also designate researchers, **restorative justice** practitioners or other actors in **the restorative justice field** as contact points.

4. Members States may also designate researchers, **university staff**, practitioners **in the fields of mediation in criminal cases and restorative justice** or other actors in these fields as contact points.

actors in **these fields** as contact points.

*Justification*

*See Amendment 1 to the title. It is also important to include outstanding figures from the universities among the possible candidates who can be designated as contact points.*

Amendment 43  
Article 6, paragraph 4 a (new)

**4(a) Member States should ensure that men and women are appropriately represented at the contact points.**

*Justification*

*This amendment does not call for any further explanation.*

Amendment 44  
Article 6, paragraph 5

5. Member States shall ensure that **researchers, restorative justice** practitioners and other actors in **the restorative justice field**, such as local authorities and non-governmental organisations, are involved through the designated contact points.

5. Member States shall ensure that researchers, **university staff**, practitioners **in the fields of mediation in criminal cases and restorative justice** or other actors in **these fields**, such as local authorities, **the private sector** and non-governmental organisations, are involved through the designated contact points.

*Justification*

*See Amendment 1 to the title and, mutatis mutandis, amendment 42 to Article 6(4).*

Amendment 45  
Article 6, paragraph 5 a (new)

**5a. The Commission shall designate a contact point**

*contact point.*

*Justification*

*Self-explanatory.*

Amendment 46  
Article 6, paragraph 6

6. Each **Member** State shall ensure that its contact points have sufficient knowledge of at least one other official language of the European Union, to facilitate the practical operation of the network and in particular the contacts with the **other** contact points.

6. Each State shall ensure that its contact points have sufficient knowledge of at least one other official language of the European Union, to facilitate the practical operation of the network and in particular the contacts with the contact points **of the other Member States and candidate countries for accession to the European Union.**

*Justification*

*The candidate countries may form part of the network and designate their contact points. Nevertheless, they are not yet 'Member' States of the Union.*

Amendment 47  
Article 7, paragraph 2

2. The network shall meet at least once every six months, on the invitation of the Presidency-in-Office of the Council. **A** representative of the Member State which is holding the Presidency of the Council at that time, shall chair the **network national representatives** meeting.

2. The **European network for mediation and restorative justice** shall meet at least once every six months, on the invitation of the Presidency-in-Office of the Council. **The** representative **responsible for mediation and restorative justice in the** Member State which is holding the Presidency of the Council at that time, shall chair the meeting.

*Justification*

*See Amendment 1 to the title as regards the first part of the amendment. The second part is self-explanatory.*

Amendment 48  
Article 7, paragraph 2 a (new)

***2a. The meetings shall be held in Brussels, at the seat of the Council and in accordance with the provisions of its Rules of Procedure.***

***Nevertheless, by way of exception and for duly justified reasons, meetings may also be held in any of the Member States which have designated contact points.***

*Justification*

*Self-explanatory.*

Amendment 49  
Article 7, paragraph 3

***3. The network may decide to confer to a national contact point the secretariat of the network.***

***3. The Commission shall be responsible for the secretariat of the European network for mediation and restorative justice, which shall be located, as a separate unit, in the secretariat of the European Crime Prevention Network set up by the Council through Decision 2001/427/JHA.***

*Justification*

*Responsibility for the network's secretariat should rest with the Commission, and it should be located in the secretariat of the European Crime Prevention Network, albeit as a separate unit, which will make it possible to reduce operating costs to a minimum and benefit from synergies with the existing network.*

Amendment 50  
Article 7, paragraph 4, introductory phrase

**4. The network national representatives shall decide on the network's annual programme, including a financial plan. In particular, they shall decide:**

**4. Together with the meetings of the European network for mediation and restorative justice, the representatives of each Member State, designated in accordance with the provisions of Article 6(3), shall meet to decide, unanimously, on the following matters:**

*Justification*

*Decisions on the matters referred to in the points of this paragraph should be adopted, among the three possible contact points representing each state, by the representative of the national authority responsible for mediation in criminal cases and restorative justice.*

Amendment 51  
Article 7, paragraph 4, first indent

- the priority fields to be examined with a view to an action, hereby bearing in mind Articles 10 and 17 of the Council Framework Decision 2001/220/JHA,

**(a)** the priority fields to be examined with a view to an action, hereby bearing in mind Articles 10, **12** and 17 of the Council Framework Decision 2001/220/JHA,

*Justification*

*From the formal point of view, it is preferable in this specific case to subdivide the text into points identified by letters rather than simply into indents.*

*It is also essential to take account of Article 12 of the framework decision.*

Amendment 52  
Article 7, paragraph 4, second indent

– the main specific actions to be carried out (conferences, seminars, research programmes, training programmes),

**(b)** the main specific actions to be carried out (conferences, seminars, research programmes, training programmes),

*Justification*

*From the formal point of view, it is preferable in this specific case to subdivide the text into points identified by letters rather than simply into indents.*

Amendment 53

Article 7, paragraph 4, third indent

- |  |            |  |
|--|------------|--|
| – the creation, the structure and the development of an electronic information exchange system and a web-site. | <b>(c)</b> | the creation, the structure and the development of an electronic information exchange system and a web-site. |
|--|------------|--|

*Justification*

*See justification to Amendment 51 to Article 7(4), first indent.*

Amendment 54

Article 7, paragraph 4, second subparagraph

The national representatives shall also draw up the ***annual report on the activities of the network. They shall draw up their Rules of Procedure, to be adopted by unanimity.***

The national representatives shall also draw up the Rules of Procedure ***of the European network for mediation and restorative justice.***

*Justification*

*See Amendment 1 to the title.*

*In addition, responsibility for drawing up the annual report on activities should rest with the secretariat, even if it is drawn up in close cooperation with the network national representatives.*

Amendment 55

Article 7, paragraph 5

***5. The financing of the network may be subject to a decision of the Council.***

***5. The secretariat of the European network for mediation and restorative justice and its activities shall be financed from the general budget of the European***

**Union.**

*Justification*

*Determining the way in which the network is to be financed should not be left to a subsequent decision, and given that the network is aimed at achieving an objective of the Union, its operational expenditure should be charged to the general budget of the EU.*

Amendment 56

Article 7, paragraph 5 a (new)

**5a. The secretariat shall:**

***(a) be responsible for drawing up both the annual work programme and the financial plan, which shall be decided, by unanimity, together with the representatives of the national authorities responsible for mediation in criminal cases and restorative justice in each Member State;***

***(b) perform the day-to-day activities of the network connected with compiling, analysing and disseminating information in cooperation with the national contact points;***

***(c) assist members of the network in the design, drawing-up and implementation of projects;***

***(d) create and maintain the network's website.***

*Justification*

*It is vital that an explicit definition of the tasks and responsibilities of the network secretariat be provided.*

Amendment 57

Article 8

The Council shall ***evaluate the activities and the working*** of the network ***within the three years*** of the ***adoption*** of this Decision.

The Council shall ***carry out an initial evaluation of the functioning*** of the ***European network for mediation and restorative justice one year after the entry***

Decision.

*into force of this Decision and, subsequently, every three years.*

*Justification*

*It is important to make provision for an initial evaluation one year after the network comes into operation, since the start is always the most difficult period. Provision should also be made for regular evaluation every three years.*

Amendment 58

Article 9

The Decision shall take effect *on the day of its adoption.*

The Decision shall take effect *one month after its publication in the Official Journal of the European Union.*

*Justification*

*Self-explanatory.*

## **EXPLANATORY STATEMENT**

### **I. INTRODUCTION**

From their beginnings in the late 18<sup>th</sup> century, both criminal law and the judicial systems created to apply it have expressed their objectives almost exclusively in terms of the relationship between the State and the criminal.

All too often, this system has tended to increase rather than diminish the problems affecting the victim, the offender and society as a whole.

First of all, a key function of criminal justice should be to provide a satisfactory response to the needs of victims and safeguard their interests. It is therefore necessary to boost victims' confidence in criminal justice and encourage them to cooperate, particularly in their capacity as witnesses. In order to achieve those objectives, however, judicial systems in the field of criminal law should take greater account of the physical, psychological, material and social harm suffered by victims and consider what steps should be taken to give an adequate response to their needs in these areas.

Moreover, there is no reason why these measures should conflict with other objectives of criminal law and proceedings such as strengthening social standards and reintegrating offenders. On the contrary, they may help achieve them and facilitate possible reconciliation between the victim and the offender. It is therefore fundamental to strengthen among



offenders a sense of their responsibilities and offer them a concrete possibility of reform, which will in turn facilitate their social reintegration and rehabilitation.

Likewise, personal active participation in criminal proceedings should be permitted for both the victim and the offender, as well as all those affected by the crime, and the community should also be involved. Consequently, a body of rules should be introduced enabling the national legislator, decision-making authorities and the bodies responsible for implementation to guarantee the fair and effective application of sanctions, and to ensure that these measures can be applied in the community. The objective of their application should be to maintain a balance between the necessity to protect society, in its dual aspect of defending public order and applying the rules with a view to repairing the damage caused to victims and, at the same time, not to lose sight under any circumstances of the needs of the offender in terms of social integration.

This would make a highly significant contribution towards ensuring that criminal justice achieves results which are more constructive and less repressive.

## **II. RESTORATIVE JUSTICE AND MEDIATION**

### **(a) Brief history**

In the 1960s, in response to the observation that the criminal judicial system did not respond to the needs of the victim, a theoretical debate arose on how to tackle and resolve the consequences of crimes involving both offenders and their victims.

On the one hand, victims were scarcely taken into account in the proceedings and did not receive any response to important questions which affected them as victims. On the other hand, even though offenders were punished, they were not required to bear any responsibility for repairing the damage which their act had caused to the victim and to the community as a whole.

For these reasons, from the 1980s onwards, restorative justice began to emerge in the form of mediation between the victim and the offender. In 1998, more than 900 mediation programmes were under way in Europe. At present, mediation between victims and offenders has been developed in Norway, Finland, the United Kingdom, Austria, Germany, France and Belgium. Various interesting pilot projects are being carried out in countries such as Denmark, Sweden, the Netherlands, Luxembourg, Ireland, Spain and Italy, and various European States have already adopted the corresponding legislation governing mediation.

Restorative justice is also expanding through Eastern Europe, particularly among the candidate countries for accession. Following an experimental period, some mediation programmes are already in operation in Poland. Other countries of Central and Eastern Europe have also taken important initiatives, such as the Czech Republic, Russia, Slovenia and Albania. Organisations linked to restorative justice and a number of highly interesting projects are emerging in Bulgaria, Hungary and Romania.

This clearly demonstrates the unstoppable process by which restorative justice is becoming more and more important.

## **(b) Restorative justice: definition and objectives**

Restorative justice might be defined in simple terms as the process through which the parties with interests in a particular crime collectively decide how to resolve the consequences of the offence and its future implications.

In other words, restorative justice is a novel way of approaching the resolution of the problem created by the crime which brings together all the parties involved, including, in the majority of cases, the community, in an active relationship with the competent authorities.

Consequently, restorative justice does not represent a specific method, technique or programme. Restorative justice refers to a radically new and global vision of the criminal justice process, in which the needs of the victim are placed at the forefront and offender accountability is emphasised in a positive manner, and in which offenders are offered concrete opportunities for reform with a view to their social reintegration, the aim being to resolve the manifold conflicts associated with crime.

Restorative justice is a scale of values which can indicate how to resolve the problems linked to all crimes at all levels.

The aim of restorative justice is not to create a parallel or alternative system to the current criminal justice system. Proposals for restorative justice are increasingly designed to be integrated into the current criminal justice system, with the aim of modifying the foundations of the system itself and making the repair of damage the paramount objective of the system.

For restorative justice, the material and non-material repairing of the disrupted relationship between the victim, the community and the offender constitutes a general guiding principle in criminal proceedings.

Restorative justice relates both to less serious forms of crime and to more serious crimes committed by both juveniles and adults. Given that the active participation of the victim, the offender and their respective support services is one of the key elements of this approach, restorative justice also offers concrete opportunities for the constructive and specific involvement of citizens in crime-related issues.

## **(c) Mediation**

Up to now, mediation in criminal matters has been the form most commonly taken by restorative justice. Mediation might be defined as the process which enables the victim and the offender to play an active part, if they freely consent, in resolving the problems and difficulties caused by the crime, with the help of an independent third party (the mediator).

The general principles which must govern mediation in criminal matters are the free consent of the parties, the confidentiality of discussions, its availability in criminal cases and throughout all the stages of the criminal justice process, and the guaranteed autonomy of mediation services within the criminal justice system.

## **III. THE INITIATIVE OF THE KINGDOM OF BELGIUM**

In view of the growing importance of restorative justice and the enormous differences which

exist between Member States of the European Union as regards the development, support, concept and familiarity with the practices of restorative justice, the Kingdom of Belgium has presented an extremely interesting initiative which may contribute to the creation of an area of freedom, security and justice in EU territory, bearing in mind that each Union citizen may move freely but may also be the victim of a crime in any of its Member States.

The initiative seeks to set up a network of contact points aimed at creating an institutionalised forum for the permanent exchange of information and theoretical and practical knowledge on restorative justice and its main form: mediation.

It is clear that certain EU Member States have already accumulated a large body of experience of restorative justice, but this is not the case in other Member States and the dissemination of such information is not presently guaranteed at political level. This is why an official European network should be set up.

The initiative also foresees that the European network of contact points should provide assistance to all the EU Member States, which are required to adopt the necessary measures, before 22 March 2006, to promote mediation in criminal cases as laid down by Article 17 of the Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings.

Apart from the exchange of information, the network will also promote research on the topic of restorative justice, help to identify and develop the main areas for training and evaluation, organise conferences, seminars and meetings to promote restorative justice practices and stimulate the exchange of best practices. This would enable the European Union to develop its own vision and its own policy in this field.

#### **IV. ASSESSMENT**

The Tampere European Council assigned the Justice and Home Affairs Council four main areas of work: the mutual recognition of judicial decisions, the harmonisation of criminal law, integrated cooperation and the development of international relations.

On the basis of its content, the initiative of the Kingdom of Belgium, even though it does not involve the creation of any real integrated cooperation body, might nevertheless be considered to be an element which will help increase cooperation among the states in an area of common interest, in line with the political mandate given by the Tampere European Council.

However, in view of the present proposal from the Kingdom of Belgium, your rapporteur must make a general criticism regarding the European Union's over-complex and incoherent manner of legislating in areas covered by the third pillar relating to police and judicial cooperation in criminal matters. The combination of the ability of the Member States to submit legislative initiatives and the rotational nature of presidencies, which come and go every six months, makes it virtually impossible to select the priorities for criminal policy, given that the Member States have been unable to reach overall agreements and their proposals are frequently the result of specific or national circumstances.

Your rapporteur notes that the current legislative function within the third pillar should be reformed as a matter of urgency so that, inter alia, if the right of initiative of the States is

maintained, that initiative will correspond to the priorities for criminal policy unanimously decided by the Council, and at the same time a threshold will be set of at least one-third of Member States for an initiative to be deemed admissible.

Your rapporteur takes the view that the initiative of the Kingdom of Belgium contains positive elements, in that it proposes extending cooperation among states in the fields of mediation and restorative justice, which represent a radically different way of approaching the resolution of the conflict which ensues when a crime is committed, involving all the parties: offender, victim, judges, police, public and private organisations and citizens, transcending the traditional system which has prevailed since the very beginnings of criminal law.

Nevertheless, your rapporteur considers that the initiative also presents serious defects, starting with the incorrect choice of legal basis and ending with important defects of legal technique, accompanied by serious omissions as regards the need to provide a minimum structure with a secretariat which will guarantee its functioning and the definition of its tasks.

First of all, your rapporteur questions the legitimacy of the initiative, which cites as its legal basis Article 34(2)(c) TEU, which can be used as a legal basis only as regards the choice of legal form (in this case a 'decision'). Bearing in mind the content, your rapporteur considers that the initiative could be based on Article 31(a) and (c) TEU, since it seeks to facilitate, accelerate and improve cooperation. The Committee on Legal Affairs and the Internal Market has been asked for its opinion on the matter pursuant to Rule 63(2) of Parliament's Rules of Procedure.

Your rapporteur has also tabled 54 amendments for the committee's consideration, the aims of which can be summed up as follows:

- (a) giving a clear indication of the purpose of the initiative so that there is no misunderstanding as to its content, emphasising that mediation in criminal cases is the most important manifestation of restorative justice and that the Member States must apply it before 22 March 2006, as laid down by Article 17 of Council Framework Decision 2002/220/JHA. This is the reason for amendments: 1, part of 24, 25, 27, 28, 29, 30, 31, 32, 33, 34, 35, 37, 39, 40, 41, 42, 44, 47, 50 and 54;
- (b) deleting references to specific international legal instruments on the grounds that they are not sufficient justification for the articles of the legislative proposal, but including a general reference to them. This is the reason for amendments: 2, 4, 5, 6, 7, 9, 10 and 12;
- (c) referring to the relevant provisions or reasons which justify the need to set up a European network and the rules which provide for the possibility of subsidising certain projects which would correspond to the network's objectives. This is the subject of amendments: 8, 11, 13, 14, 15, 16 and 18;
- (d) proposing that a secretariat be set up, which is vital since the network will be unable to function without it. It is also proposed that the secretariat be included, as a separate unit, within the existing secretariat of the European Crime Prevention Network so as to reduce operating costs to a minimum and benefit from existing synergies. Its tasks and responsibilities have also been defined, and it is proposed that its operational

expenditure should be charged to the general budget of the EU in accordance with Article 41 TEU. This is the reason for amendments: 17, 25, 38, 49, 55 and 56;

- (e) deleting text from the articles because it has no binding value and its content is more a political statement of intent. Amendments 26, 38 and 39;
- (f) other amendments foresee the establishment of a system to assess the network (22 and 57); others provide that the Commission designate a contact point (40 and 45); Amendment 39 lays down the operational arrangements for the network; and Amendments 48 and 50 lay down the network's meeting places and types of meeting.

18 March 2003

**OPINION OF THE COMMITTEE ON LEGAL AFFAIRS AND THE INTERNAL  
MARKET**

Mr Jorge Salvador Hernández Mollar  
Chairman  
Committee on Citizens' Freedoms and Rights, Justice and Home Affairs  
BRUSSELS

Subject: Legal basis of the Initiative of the Kingdom of Belgium with a view to the adoption of a Council Decision setting up a European Network of National Contact Points for Restorative Justice

Dear Mr Hernández Mollar,

By letter of 29 January 2003 the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs asked for a verification of the legal basis of the Initiative of the Kingdom of Belgium with a view to the adoption of a Council decision setting up a European Network of National Contact Points for Restorative Justice (C5-0467/2002 - 2002/0821(CNS)).

Pursuant to Rule 63(2) of the Rules of Procedure the Committee on Legal Affairs and the Internal Market is responsible for examining the validity or appropriateness of the legal basis of the said initiative of the Kingdom of Belgium.

The basis for the initiative is Article 34(2)(c) of the Treaty on European Union. However, in the opinion of Mrs Ewa Klant, rapporteur for the committee responsible, the initiative could be based on Article 31(a) and (c) of the Treaty on European Union.

According to settled case-law, in the context of the organisation of the powers of the Community the choice of the legal basis for a measure must be based on objective factors which are amenable to judicial review. Those factors include in particular the aim and the content of the measure.<sup>1</sup>

The wording of Article 31(1) of the Treaty on European Union (as amended by the Treaty of Nice) is as follows:

*'1. Common action on judicial cooperation in criminal matters shall include:*

*(a) facilitating and accelerating cooperation between competent ministries and judicial or equivalent authorities of the Member States, including, where appropriate, cooperation through Eurojust, in relation to proceedings and the enforcement of decisions;*

*(...)*

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<sup>1</sup> See in particular the judgment of 23 February 1999 in Case C-42/97 *Parliament v Council*, paragraph 36.

*(c) ensuring compatibility in rules applicable in the Member States, as may be necessary to improve such cooperation;*

*(...)*

Article 34(2) of the Treaty on European Union reads as follows:

*2. The Council shall take measures and promote cooperation, using the appropriate form and procedures as set out in this title, contributing to the pursuit of the objectives of the Union. To that end, acting unanimously on the initiative of any Member State or of the Commission, the Council may:*

*(...)*

*(c) 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 effect; the Council, acting by a qualified majority, shall adopt measures necessary to implement those decisions at the level of the Union;*

*(...)*

Under the third pillar, Council Framework Decision 2001/220/JHA on the standing of victims in criminal proceedings<sup>1</sup> does not include provisions relating to compensation and merely deals with protecting the victim's interests in criminal proceedings. Article 10 of the framework decision requires Member States to seek to promote mediation in criminal cases for offences which it considers appropriate for this sort of measure and, further, to ensure that any agreement between the victim and the offender reached in the course of such mediation in criminal cases can be taken into account.

In relation to the first pillar the Commission has proposed a mechanism for compensating all crime victims in the Union.<sup>2</sup> The relevant proposal for a directive is based on Article 308 of the EC Treaty.

The Committee on Legal Affairs and the Internal Market has delivered an opinion on the following initiatives by Member States in the field of justice and home affairs:

- The initiative of the French Republic on the adoption of a Council decision setting up a European Judicial Training Network (CSL 13348/2000) was based on Article 31 and Article 34(2)(c) of the EU Treaty. The committee specified that the appropriate legal basis was Article 31(a) and Article 34(2)(c) of the EU Treaty.
- The initiative of the Kingdom of Spain establishing a European Institute of Police Studies (CSL 5133/2002) was based on Article 30(1), Article 30(2)(d), Article 31(c) and (e), Article 32, Article 34(1) and Article 34(2)(c) of the EU Treaty. The committee partially

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<sup>1</sup> OJ L 82, 22.3.2001, p. 1.

<sup>2</sup> COM(2002) 562.

amended the Council's proposed legal basis and took the view that the initiative should be based on Article 30(1)(a), (c) and (d), Article 30(2)(d) and Article 34(2)(c) of the EU Treaty.

- The initiative of the Kingdom of Spain setting up a network of contact points of national authorities responsible for private security (CSL 5135/2002) was based on Article 29, Article 30(1)(a) and Article 34(2)(c) of the EU Treaty. In contrast, the committee was of the opinion that the initiative ought to be based on Articles 44 and 52 of the EC Treaty, in conjunction with Article 55 thereof.
- The initiative of the Kingdom of Spain setting up a European Network for the Protection of Public Figures (CSL 5361/2002) was based on Article 29 of the EU Treaty. The committee's view was that the legal basis for the initiative ought to be Article 29, Article 30(1)(a) and Article 34(2)(c) of the EU Treaty. This decision was approved by the Council, which also added Article 30(1)(c) to the legal basis.<sup>1</sup>

The aim of the Belgian initiative is set out in Article 3 thereof, which states that the network's objective is to 'contribute to developing, supporting and promoting the various aspects of restorative justice within the Member States as well as at the European Union level'.

The recitals of the initiative cite acts of public international law and of Community law relating to protection for crime victims; they recommend the governments of the Member States 'to examine the possible advantages of mediation and conciliation schemes' (recitals 1 and 11), 'with particular reference to how far the interests of the victim are served' (recital 3).

Recital 4 stresses the importance of greater community involvement in the management of criminal justice and the need to promote among offenders a sense of responsibility towards their victims and towards society as a whole.

The use of informal mechanisms for the resolution of disputes, including mediation, arbitration and customary justice or indigenous practices to facilitate conciliation and redress for victims is also recommended (recitals 2, 8 and 10), given that 'sanctions and measures whose enforcement takes place in the community constitute important ways of combating crime and to avoid negative effects of imprisonment' (recital 5).

Recital 12 cites European Parliament resolution of 15 June 2000 on the Commission communication on crime victims in the European Union: Reflections on standards and action<sup>2</sup>, which stressed the importance of the development of the rights of crime victims.

According to Article 2 restorative justice 'refers to a comprehensive view of the criminal justice process, in which the needs of the victim are prioritised and offender accountability is emphasised in a positive manner and covers a body of ideas that is relevant to various forms of sanctioning and conflict handling in the successive stages of or in connection with the criminal justice process'. Recital 15 explains that restorative justice denotes a broad approach in which material and immaterial reparation of the disturbed relationship between the victim,

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<sup>1</sup> Council Decision of 28 November 2002 setting up a European Network for the Protection of Public Figures (2002/956/JHA), OJ L 333, 10.12.2002, p. 1.

<sup>2</sup> OJ C 67, 1.3.2001, p. 304.



the community and the offender constitutes a general, guiding principle in the criminal justice process.

In terms of substance, the Belgian initiative sets out to establish a mechanism for cooperation and coordination among the criminal justice authorities in the Member States with responsibility for restorative justice by means of a European Network of national contact points for Restorative Justice (Article 1) providing legislative and logistic support to criminal justice authorities (Article 3).

Articles 4 and 5 describe the network's tasks and activities. Its composition and functioning are defined in Articles 6 and 7 respectively.

At its meeting of 18 March 2003 and in the light of the above considerations the Committee on Legal Affairs and the Internal Market decided unanimously<sup>1</sup> to add Article 31(a) and (c) of the EU Treaty to the legal basis proposed by the Council.

Yours sincerely,

(sgd) Giuseppe Gargani

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<sup>1</sup> The following were present for the vote: Giuseppe Gargani (chairman), Ioannis Koukiadis and Willi Rothley (vice-chairmen), William Abitbol, Paolo Bartolozzi, Luis Berenguer Fuster, Ward Beysen, Charlotte Cederschiöld, Michel J.M. Dary, Bert Doorn, Francesco Fiori, Janelly Fourtou, Evelyne Gebhardt, Fiorella Ghilardotti, José María Gil-Robles Gil-Delgado, Malcolm Harbour, The Lord Inglewood, Hans Karlsson, Kurt Lechner, Klaus-Heiner Lehne, Toine Manders, Manuel Medina Ortega, Marcelino Oreja Arburúa, Imelda Mary Read, Anne-Marie Schaffner, Marianne L.P. Thyssen, Ieke van den Burg, Diana Wallis, Matti Wuori and Stefano Zappalà

3 March 2003

## **OPINION OF THE COMMITTEE ON WOMEN'S RIGHTS AND EQUAL OPPORTUNITIES**

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

on the Initiative by the Kingdom of Belgium with a view to the adoption of a Council Decision setting up a European network of national contact points for restorative justice

(11621/2002 – C5-0467/2002 – 2002/0821(CNS))

Draftsperson: Patsy Sörensen

### **PROCEDURE**

The Committee on Women's Rights and Equal Opportunities appointed Patsy Sörensen draftsperson at its meeting of 26 November 2002.

It considered the draft opinion at its meetings of 23 January and 19 February 2003.

At the latter meeting it adopted the following amendments by 17 votes in favour, with 1 abstention.

The following were present for the vote: Anna Karamanou, chairperson; Marianne Eriksson, vice-chairperson; Jillian Evans, vice-chairperson; Patsy Sörensen, draftsperson; María Antonia Avilés Perea, Armonia Bordes, Lone Dybkjær, Lissy Gröner, Mary Honeyball, María Izquierdo Rojo (for María Rodríguez Ramos), Astrid Lulling, Maria Martens, Christa Prets, Amalia Sartori, Joke Swiebel, Feleknas Uca, Elena Valenciano Martínez-Orozco, Sabine Zissener.

### **SHORT JUSTIFICATION**

This proposal to set up a European network of national contact points for restorative justice wants to develop, support and promote different aspects of restorative justice in the Member States and the Union.

Restorative Justice holds a comprehensive vision on the criminal justice process wherein the active participation and attention for all the parties affected by the criminal offence. Not only the suspect and the prosecution, but also the victim or victims and society as a whole are to be given a place and position in the procedure.

There already exists a European Network for Crime Prevention in which restorative justice was given a place. However, restricting restorative justice within a framework of prevention does not address the far wider and comprehensive vision behind the criminal justice process. Restorative justice can only be given a real chance if sufficient information sharing and co-operation is organised within as well as between Member States. This means that legislative and logistical support to criminal justice authorities will be important.

The proposal importantly provides for close co-operation with NGOs and experts. This is a recognition of the origins of restorative justice thinking as arising from grass-roots movements.

Overall, substantively this proposal forms a valuable contribution to the reality of how justice is put in practice. Of critical importance will be whether the network is well conceived and whether it will be able to be sufficiently pro-active.

The Committee on Women's Rights and Equal Opportunities perceives it as important to stress that not only community members but also organisations acting in the field of restorative justice are concerned that restorative justice options could be used in cases when women and children had been victims of violence. In such cases it is crucial to ensure justice options for them before focussing specifically on restorative justice. Research and exchange of views with all parties concerned about appropriate use of restorative justice process should be carried together with criminal justice sanctions in order to insure the protection of women in case of gender specific offences and the protection of their privacy. Therefore, just representation of women in contact points should be ensured so that women's view is taken into account in co-operation among Member States in the field of restorative justice.

## AMENDMENTS

The Committee on Women's Rights and Equal Opportunities calls on the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs, as the committee responsible, to incorporate the following amendments in its report:

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

Amendments by Parliament

Amendment 1  
Recital (15) (a) (new)

***(15) (a). Whereas restorative justice to a large extent refers to gender-specific violence.***

Amendment 2  
Recital (15) (b) (new)

***(15) (b). Whereas restorative justice appropriately implemented can assist with community capacity building in order for communities to show a better involvement in the safety of society, especially women and children.***

Amendment 3  
Recital (16)

(16) Although thus far restorative justice has mainly found expression in different forms of mediation between victims and offenders (victim–offender mediation), other methods are increasingly being applied, as for example family group conferencing. Governments, police, criminal justice agencies, specialised authorities, victim aid and support services, offender aid services, researchers and the public are all involved in this process.

(16) Although thus far restorative justice has mainly found expression in different forms of ***(voluntary)*** mediation between victims and offenders (victim–offender mediation), other methods are increasingly being applied, as for example family group conferencing. Governments, police, criminal justice agencies, specialised authorities, victim aid and support services, offender aid services, researchers and the public are all involved in this process.

<sup>1</sup> OJ C 242, 8.10.2002, p. 30

Amendment 4  
Recital (16) (a) (new)

***(16) (a). Whereas it is crucial, in case of victims of gender specific violence, to ensure that restorative justice options do not revictimize women, victims, lawyers and community should have a voice in justice policy.***

Amendment 5  
Article 4, point (e)

(e) Contribute to identify and develop the main areas for training and evaluation in the field of restorative justice;

(e) Contribute to identifying and developing the main areas for training and evaluation in the field of restorative justice, ***particularly in those areas in which most victims are women;***

*Justification*

*Emphasis should be placed on women as the main victims.*

Amendment 6  
Article 4 e) (a) (new)

***4 e)(a) Contribute to informing and influencing justice policies regarding restorative justice options through the preparation of recommendations about restorative justice policies and practices, including the role of government in community capacity-building.***

Amendment 7  
Article 4 g) (a) (new)

***4 g) (a). Develop specialised restorative-justice measures for migrant women, in which due attention would be paid to their cultural background.***

Amendment 7

Article 6, paragraph 4 a (new)

***4(a) Member States should ensure that men and women are appropriately represented at the contact points.***

*Justification*

*This amendment does not call for any further explanation.*