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REPORT

on the initiative of the Kingdom of Spain establishing a European Institute of
Police Studies
(5133/2002 – C5-0055/2002 – 2002/0803(CNS))

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

Rapporteur: Sérgio Sousa Pinto

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 1 February 2002 the Council consulted Parliament, pursuant to Article 39(1) of the Treaty on European Union, on the initiative of the Kingdom of Spain establishing a European Institute of Police Studies (5133/2002 - 2002/0803(CNS)).

At the sitting of 7 February 2002 the President of Parliament announced that he had referred this proposal to the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs as the committee responsible (C5-0055/2002).

The Committee on Citizens' Freedoms and Rights, Justice and Home Affairs appointed Sérgio Sousa Pinto rapporteur at its meeting of 20 February 2002.

It considered the initiative of the Kingdom of Spain and draft report at its meetings of 18 April and 14 May 2002.

At its meeting of 9 April 2002 it decided to ask the Committee on Legal Affairs and the Internal Market for an opinion on the legal basis for the proposal, pursuant to Rule 63(2) of the Rules of Procedure.

At the meeting of 14 May 2002 it adopted the draft legislative resolution by 42 votes to 1, with no abstentions.

The following were present for the vote: Ana Palacio Vallelersundi, chairman; Robert J.E. Evans, first vice-chairman; Lousewies van der Laan, second vice-chairman; Giacomo Santini, third vice-chairman; Hans Blokland (for Ole Krarup pursuant to Rule 153(2)), Giuseppe Brienza, Kathalijne Maria Buitenweg (for Alima Boumediene-Thiery), Marco Cappato (for Mario Borghezio), Charlotte Cederschiöld, Carmen Cerdeira Morterero, Ozan Ceyhun, Carlos Coelho, Gérard M.J. Deprez, Giuseppe Di Lello Finuoli, Marie-Thérèse Hermange (for Thierry Cornillet), Jorge Salvador Hernández Mollar, Pierre Jonckheer, Anna Karamanou (for Adeline Hazan), Margot Keßler, Timothy Kirkhope, Eva Klamt, Lucio Manisco (for Fodé Sylla), Luís Marinho (for Sérgio Sousa Pinto), Manuel Medina Ortega (for Michael Cashman), Hartmut Nassauer, William Francis Newton Dunn, Arie M. Oostlander (for Bernd Posselt), Elena Ornella Paciotti, Paolo Pastorelli (for The Lord Bethell), Hubert Pirker, Martine Roure, Heide Rühle, Olle Schmidt, Ilka Schröder, Ole Sorensen, Patsy Sörensén, The Earl of Stockton (for Mary Elizabeth Banotti), Joke Swiebel, Anna Terrón i Cusí, Maurizio Turco, Gianni Vattimo (for Walter Veltroni), Christian Ulrik von Boetticher and Olga Zrihen Zaari (for Martin Schulz).

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

The report was tabled on 15 May 2002.

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

LEGISLATIVE PROPOSAL

Initiative of the Kingdom of Spain establishing a European Institute of Police Studies (5133/2002 – C5-0055/2002 – 2002/0803(CNS))

The initiative is rejected.

DRAFT LEGISLATIVE RESOLUTION

Legislative resolution of the European Parliament on the proposal for a Council decision on the initiative of the Kingdom of Spain establishing a European Institute of Police Studies (5133/2002 – C5-0055/2002 – 2002/0803(CNS))

(Consultation procedure)

The European Parliament,

- having regard to the initiative of the Kingdom of Spain (5133/2002¹),
- having regard to the Treaty on European Union, in particular Article 30(1), Article 30(2)(d), Article 31(c) and (e), Article 32, Article 34(1) and Article 34(2)(c),
- having been consulted by the Council pursuant to Article 39(1) of the Treaty on European Union (C5-0055/2002),
- having regard to Rule 106 and Rule 67 of its Rules of Procedure,
- having regard to the opinion on the legal basis of the Committee on Legal Affairs and the Internal Market,
- having regard to the report of the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs (A5-0166/2002),

1. Rejects the initiative of the Kingdom of Spain;
2. Calls on the Kingdom of Spain to withdraw its initiative;
3. Instructs its President to forward this opinion to the Council, the Commission and the Government of the Kingdom of Spain.

¹ OJ C 42, 15.2.2002, p. 16.

EXPLANATORY STATEMENT

By letter of 1 February 2002 the Council consulted Parliament on the initiative of the Kingdom of Spain with a view to the adoption of a Council decision establishing a European Institute of Police Studies (EIPS). The initiative was referred by the Council to Parliament pursuant to Article 39 of the Treaty on European Union (EU Treaty). In general, it was not well received by the Member States, which made a variety of marginal annotations to the text. These annotations concern (1) the issue of the added value offered by the EIPS in the light of the existing arrangements in the sphere of police cooperation and measures to combat crime, (2) the legal basis chosen, and, in particular (3) the substance of the initiative.

1. The added value offered by the EIPS in the light of the existing arrangements

Article 29 of the EU Treaty stipulates that 'the Union's objective shall be to provide citizens with a high level of safety within an area of freedom, security and justice by developing common action among the Member States in the fields of police and judicial cooperation in criminal matters'. Pursuant to the second paragraph of Article 29, this objective is to be achieved 'by preventing and combating crime, organised or otherwise'. The fight against crime in the Union was one of the key topics discussed at the Tampere European Council. In recent years, a number of steps have been taken in this area:

(1) European Judicial Network (criminal matters)¹

The pre-Amsterdam European Judicial Network was established by the Council by means of a Joint Action of 29 June 1998. A network of judicial contact points was set up between the Member States with the aim of facilitating judicial cooperation among the Member States, in particular in the field of serious crime. The Network has no legal personality and no budget.

(2) European Judicial Network in civil and commercial matters²

This European Judicial Network was set up by means of a Council Decision of 28 May 2001 and consists of a number of national contact points. The Network's role is similar to that of the European Judicial Network in criminal matters, namely that of facilitating judicial cooperation among the Member States in civil and commercial matters, including the establishment of an information system accessible to the public. The Network has a budget, but no legal personality.

(3) European Police College (EPC)³

The European Police College was set up by means of a Council Decision of 22 December 2000. It takes the form of a network of national training institutes for senior police officers

¹ Joint Action of 29 June 1998 adopted by the Council on the basis of Article K.3 of the Treaty on European Union, on the creation of a European Judicial Network OJ L 191, 7.7.1998, p. 4.

² Council Decision of 28 May 2001 establishing a European Judicial Network in civil and commercial matters, OJ L 174, 27.6.2001, p. 25.

³ Council Decision of 22 December 2000 establishing the European Police College, OJ L 336, 30.12.2000, p. 1.

with management duties from the Member States. It has no legal personality and is funded by means of contributions from the Member States.

(4) European crime prevention network¹

The European crime prevention network was set up by means of a Council Decision of 28 May 2001. It consists of contact points designated by each Member State. Crime prevention covers all measures intended to reduce crime and citizens' feelings of insecurity. The network's secretariat and its activities are funded from the general budget of the European Union.

Alongside these networks, Europol plays an important role in supporting crime prevention, crime analysis and criminal investigations in the Union. In the wake of the Tampere European Council, an operational Task Force of European Police Chiefs was also set up with the task of exchanging, in cooperation with Europol, experience, best practices and information concerning cross-border crime. In a further step, on 28 February 2002 the Council adopted a decision setting up Eurojust². It is a unit consisting of prosecutors, magistrates or police officers of equivalent competence seconded by the Member States. The purpose of Eurojust is to facilitate proper coordination of the national authorities responsible for criminal investigations. It supports Europol in criminal investigations into cases involving organised crime and works closely with the European Judicial Network.

The initiative of the Kingdom of Spain establishing an EIPS, which is under consideration here, seeks to contribute to better coordination between the networks and agencies referred to above in the sphere of police cooperation and the fight against crime. Its aim is to bring about more integrated and more stable police cooperation. However, your rapporteur fears that the initiative will make no contribution to more effective coordination between the networks and agencies referred to above. Indeed, the reverse may be true, in that the institute proposed by the Kingdom of Spain may duplicate the work of the existing networks and agencies, in particular that of the European Police College (EPC)³. For that reason, he urges Parliament to reject the initiative.

2. The legal basis chosen for the initiative

The Kingdom of Spain has chosen a large number of articles of the EU Treaty on which to base its initiative. Your rapporteur has doubts about the choice of Article 31(e) in conjunction with Article 34(2) of the EU Treaty. In his view, the initiative should be based on Article 30 in conjunction with Article 34(2)(c) of the EU Treaty⁴.

¹ Council Decision of 28 May 2001 setting up a European crime prevention network, OJ L 153, 8.6.2001, p. 1.

² OJ L 63, 6.3.2002, p. 1.

³ OJ L 336, 30.12.2000, p. 1.

⁴ In a letter of 25 March 2002, the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs consulted the Committee on Legal Affairs and the Internal Market on this matter.

3. Substance of the initiative

The initiative proposes the establishment of a European Institute of Police Studies. The aim is to set up a formal structure, initially in the form of a network bringing together the national training and research institutes in the field of security in the Member States. The overall objective is to develop a public security policy in Europe, with the EIPS acting as a monitoring centre in the sphere of police cooperation.

The structure of the EIPS, as proposed in the Spanish initiative, is strongly reminiscent of the structure outlined in the decision establishing the European Police College, to which the initiative barely refers, however¹. In an earlier note on the development of a model for police cooperation, the Spanish Presidency did refer to the EPC and its area of work². The aim of the EPC is to offer training to senior police officers with management duties. Its area of work is the fight against crime, crime prevention and the maintenance of law and order and public safety, in particular from a cross-border perspective.

The document under consideration here suggests that the EIPS will work in the same area, using a research-based approach, with the aim of creating a body of technical and scientific knowledge. Instead of building on the existing EPC network, the Kingdom of Spain wishes to set up a new network. A study of the two networks clearly reveals that the objectives laid down in the document under consideration here are also closely akin to those of the existing EPC network. Your rapporteur therefore suggests that consideration should be given to incorporating the EIPS into the existing EPC network, by means of an amendment to the Council Decision setting up the European Police College. The establishment of a new network would therefore seem neither advisable nor desirable. Budgetary consideration likewise suggest that the EIPS should be merged with the European Police College. This would serve to make the overall system more coherent.

In other words, the EPC network of national training institutes for senior police officers with management duties should be expanded to take in national training and research institutes in the field of security in the Member States. As regards the objectives, the EPC already has a mandate in the sphere of the fight against crime, crime prevention and the maintenance of law and order and public security. This mandate should simply be expanded to cover 'the creation of a body of technical and scientific knowledge' in these areas. In addition to its own activities, the EPC would be able to carry out those currently being proposed for the EIPS.

The establishment of a new network would thus seem ill-advised, particularly as it would take a great deal of time and money to set up the network and put it into operation. This factor and your rapporteur's reservations concerning the proposed legal basis argue against approval of the initiative. It should be possible to achieve the key objectives outlined in the Spanish initiative by amending the decision setting up the European Police College. For that reason, your rapporteur proposes that Parliament should reject the initiative of the Kingdom of Spain. Parliament might invite the Commission or the Member States to put forward an initiative amending the decision setting up the European Police College.

¹ The note accompanying the initiative, ENFOPOL 155 of 13 December 2001 (15205/01), makes equally little reference to that decision.

² ENFOPOL 20 of 30 January 2002.

Opinion on the legal basis of the Committee on Legal Affairs and the Internal Market

Mrs Ana Palacio Vallelersundi
Chairman
Committee on Citizens' Freedoms and Rights, Justice and Home Affairs
BRUSSELS

Subject: Legal basis of the initiative of the Kingdom of Spain establishing a European
Institute of Police Studies - CSL 5133/02

Dear Mrs Palacio Vallelersundi,

By letter of 25 March 2002 you requested the Committee on Legal Affairs and the Internal Market, under Rule 63(2), to consider the issue of the appropriate legal basis for the above proposal. The Council had based its proposal on Articles 30(1) and (2)(d), 31(c) and (e), 32, 34(1), and Article 34 (2)(c) of the Treaty of the European Union.

The Committee on Legal Affairs and the Internal Market considered the above question at its extraordinary meeting of 13 May in Strasbourg.

The Spanish initiative

The Spanish initiative is based on Article 30(1) and (2)(d), Article 31 (c) and (e), Article 32, Article 34(2)(c) EU Treaty.

It aims at ensuring coordination and cooperation between law enforcement authorities.¹

Its content is the creation of an Institute, the European Institute of Police Studies (hereafter the EIPS), which is to take initially the form of network between national training and research institutes.² Acting on proposals from the governing board, the EIPS is to implement the programmes and initiatives adopted by the Council in response to crime.³ Future developments of the nature of the EIPS are forecast, arising from a report on the operation and future of the EIPS to be submitted by the governing board to the Council.⁴ The draft Council decision does not shed any light as to the future evolution of the network.

¹ Fifth recital of the draft Council decision.

² Article 1(2) and (3) of the draft Council decision.

³ Article 1(3) of the draft Council decision.

⁴ Articles 1(2) and 9 of the draft Council decision.

Assessment

Pursuant to Title VI of the EU Treaty, the Union may act in various ways in order to prevent and combat crime, organised or otherwise, in particular terrorism, trafficking in persons and offences against children, illicit drug trafficking and illicit arms trafficking, corruption and fraud¹.

Common action in the field of police cooperation includes operational cooperation between national law enforcement services in relation to the prevention, detection and investigation of criminal offences [Article 30(1)(a) EU Treaty], cooperation and joint initiatives in training, the exchange of liaison officers, secondments, the use of equipment, and forensic research [Article 30(1)(c) EU Treaty], and the common evaluation of particular investigative techniques in relation to the detection of serious forms of organised crime [Article 30(1)(d) EU Treaty].

Common action in the field of judicial cooperation in criminal matters includes ensuring compatibility in rules applicable in the Member States, as may be necessary to improve such cooperation [Article 31(c) EU Treaty] and to progressively adopt measures establishing minimum rules relating to the constituent elements of criminal acts and to penalties in the fields of organised crime, terrorism and illicit drug trafficking [Article 31(e) EU Treaty].

Pursuant to Article 32 EU Treaty, the Council is to lay down the conditions and limitations under which the competent authorities for police and judicial cooperation may operate in the territory of another Member State in liaison and in agreement with the authorities of that State.

In the areas pertaining to the third pillar, Member States are to inform and consult each other within the Council with a view to coordinating their action. To that end, they are to establish collaboration between the relevant departments of their administrations [Article 34(1) EU Treaty].

The Council, acting unanimously on the initiative of any Member State or of the Commission, is to adopt common positions defining the Union's approach to particular matters [Article 34(2)(a) EU Treaty].

The Council may also adopt framework decisions [Article 34(2)(b)]. This legal act is binding as to the result to be achieved, but leaves the choice of form and methods to the Member States and lacks direct effect.

Finally, the Council may also adopt decisions for any other purpose than the approximation of legislation [Article 34(2)(c) EU Treaty].

The legal basis of the draft Council decision is excessive in view of its aim (cooperation between law enforcement authorities) and content (creation of an initial network between national training and research institutes that may undergo future unknown developments) and should be adapted accordingly.

¹ See Article 29, second paragraph EU Treaty.

Conclusion

The adequate legal basis is Article 30(1)(a), (c) and (d), Article 30(2)(d) and Article 34(c) EU Treaty.

The Committee on Legal Affairs and the Internal Market thus decided by 15 for and 1 against¹ that the adequate legal basis is Article 30(1)(a), (c) and (d), Article 30(2)(d) and Article 34(c) EU Treaty.

Yours sincerely,

(s) Giuseppe Gargani

¹ At its meeting of 13 May 2002, the following were present for the vote: Giuseppe Gargani (chairman), Willi Rothley (vice-chairman), Paolo Bartolozzi, Bert Doorn, Raina A. Mercedes Echerer, Janelly Fourtou, Evelyne Gebhardt, Fiorella Ghilardotti, José María Gil-Robles Gil-Delgado, Klaus-Heiner Lehne, Manuel Medina Ortega, Francesco Enrico Speroni, Marianne L.P. Thyssen, Rijk van Dam, Diana Wallis and Joachim Wuermeling.