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REPORT

on the initiative by of the Kingdom of Spain setting up a European network for
the protection of public figures
(5361/2002 – C5-0051/2002 – 2002/0801(CNS))

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

Rapporteur: The Earl of Stockton

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 EU Treaty, on the initiative by of the Kingdom of Spain setting up a European network for the protection of public figures (5361/2002 – 2002/0801(CNS)).

At the sitting of 7 February 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 (C5-0051/2002). The Committee on Citizens' Freedoms and Rights, Justice and Home Affairs appointed the Earl of Stockton rapporteur at its meeting of 19 March 2002.

At the meeting of 18 April 2002 it decided to request the opinion of the Committee on Legal Affairs and Internal Market on the proposal's legal basis under Rule 63(2). The committee considered the initiative by of the Kingdom of Spain and the draft report at its meetings of 19 February 2002, 18 April 2002 and 14 May 2002.

At the latter meeting it adopted the draft legislative resolution by 41 votes to 2, with no abstentions.

The following were present for the vote: Ana Palacio Vallelersundi, chairman; Robert J.E. Evans, vice-chairman; Lousewies van der Laan, vice-chairman and Giacomo Santini, vice-chairman; The Earl of Stockton, rapporteur and for Mary Elizabeth Banotti, 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 Michael Cashman), Timothy Kirkhope, Eva Klamt, Lucio Manisco (for Fodé Sylla), Luís Marinho (for Sérgio Sousa Pinto), Manuel Medina Ortega (for Martin Schulz), Claude Moraes (for Gianni Vattimo), Hartmut Nassauer, William Francis Newton Dunn, Arie M. Oostlander (for The Lord Bethell), Elena Ornella Paciotti, Paolo Pastorelli (for Bernd Posselt), Hubert Pirker, Martine Roure, Heide Rühle, Gerhard Schmid (for Baroness Sarah Ludford), Ilka Schröder, Ole Sorensen (for Francesco Rutelli), Patsy Sörensen, Joke Swiebel, Anna Terrón i Cusí, Maurizio Turco, Gianni Vattimo (for Walter Veltroni), Christian Ulrik von Boetticher and Olga Zrihen Zaari (for Margot Keßler).

The opinion of the Committee on Legal Affairs and the Internal Market on the legal basis 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 by of the Kingdom of Spain setting up a European network for the protection of public figures (5361/2002 – C5-0051/2002 – 2002/0801(CNS))

The proposal is amended as follows:

Text proposed by the Kingdom of Spain¹

Amendments by Parliament

Amendment 1 Indent 1

Having regard to the Treaty on European Union, and in particular Article 29 thereof,

Having regard to the Treaty on European Union, and in particular Article 29, **Article 30(1) and Article 34(2)(c)** thereof,

Justification

Article 29 of the EU Treaty on its own does not appear to be a sufficient legal base.

Amendment 2 Recital 1

(1) No European Union legislation, standards or manuals of a general nature exist to govern the protection of public figures, whether they be national public figures or those of Community or foreign origin.

(1) The organisation of protective measures and movements by public figures in the Member States of the European Union is subject to different criteria and procedures. Nonetheless, close cooperation already exists between the departments responsible for guaranteeing the freedom of persons internationally granted official protection to pursue public and private activities.

Justification

It must be recognised that close cooperation already exists and generally works well.

Amendment 3 Recital 2

(2) Dignitaries and public figures have been assassinated or attacked on a number of occasions

(2) Without adding to the existing structures for cooperation between national intelligence, security

¹ OJ C 42, 15.02.2002, p. 14.

and, although it is improbable, there is nothing to prevent such incidents recurring in future,

and police services, a European network for the protection of public figures could facilitate the exchange of officials, information and experience,

Justification

The network of contact points would not add to existing structures but could improve cooperation.

Amendment 4
Recital 3 (new)

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

Justification

National safeguards should exist to protect the individual's civil and human rights against abuse by the authorities.

Amendment 5
Article 2, paragraph 1

The Network shall consist of contact points ***of the national police departments*** with responsibility for the protection of public figures, ***designated by each Member State***.

The Network shall consist of contact points, ***designated by each Member State from the national intelligence, security and police services and other relevant agencies***, with responsibility for the protection of public figures

Justification

Cooperation should include other specialised security services, not only the police services.

Amendment 6
Article 3

In addition to furthering cooperation and collaboration between the *police departments* with responsibility for the protection of public figures, the Network shall have the following objectives:

- a) *exchanging* information, officials and experience concerned with the protection of public figures;
- b) *standardising* criteria for selecting and training appropriate staff with responsibility in each Member State for the protection of public figures;
- c) setting up a database on, in particular, assaults and attacks on public figures, case studies and methods used;
- (d) *approximating the existing rules and regulations in each Member State.*

In addition to furthering cooperation and collaboration between the *relevant agencies* with responsibility for the protection of public figures, the Network shall have the following objectives:

- a) *facilitating the exchange of* information, officials and experience concerned with the protection of public figures;
- b) *facilitating the exchange of information regarding the* criteria for selecting and training appropriate staff with responsibility in each Member State for the protection of public figures;
- c) setting up a database on, in particular, assaults and attacks on public figures, case studies and methods used, *which shall be made available to all relevant agencies*;
- Deleted*

Justification

The network should aim to facilitate and improve cooperation.

Amendment 7
Article 4

In order to achieve the proposed objectives, the Network shall *be competent to*:

- (a) *simplify the procedures by drawing up a standard form in all* Member States;

In order to achieve the proposed objectives, the Network shall:

- (a) *facilitate the simplification of procedures by exchanging best practice between* Member States;

- | | |
|---|---|
| (b) <i>determine the maximum number of armed officials according to the public figure involved and the resources to be deployed;</i> | <i>Deleted</i> |
| (c) <i>outline the conditions for provision of service by officials with responsibility for the protection of a public figure of one Member State when they are in or enter another Member State;</i> | <i>Deleted</i> |
| (d) study common methods of action to prevent assaults and attacks; | (d) study common methods of action to prevent assaults and attacks; |
| (e) <i>adopt joint protocols on the priority granted to the protected public figure during movements of delegations;</i> | <i>Deleted</i> |
| (f) collaborate with other police forces and other <i>departments</i> ; | (f) collaborate with other police forces and other <i>relevant agencies</i> ; |
| (g) <i>establish common rules to be observed in connection with accreditation and media access to the public figure involved.</i> | <i>Deleted</i> |

Justification

The national services, in the interests of operational security, should continue to have sufficient flexibility as regards the final decision for the appropriate arrangements for ensuring the protection of public figures.

Amendment 8
Article 4 a (new)

Article 4 a

1. Information or documents obtained under this Decision are intended to be used only for the purposes laid down in Article 3 and 4.

2. The information transmitted shall be protected by at least the same rules of confidentiality and protection of personal data as those that apply under the national legislation applicable to the requesting contact point.

Justification

The information provided should be subject to minimum rules regarding its use.

Amendment 9
Article 5

The Network shall, each year, draw up its operating budget, which will be approved by the Council. ***Deleted***

Justification

It is not necessary to provide for a budget as the Network will not have legal personality and each Member State can pay for its own participation in the network.

Amendment 10
Article 6, paragraph 2 (new)

2. The Parliament shall be informed of this evaluation during the annual debate pursuant to Article 39 of the EU Treaty.

Justification

The Parliament should also be informed of the evaluation of the Network.

DRAFT LEGISLATIVE RESOLUTION

European Parliament legislative resolution on the initiative by of the Kingdom of Spain setting up a European network for the protection of public figures (5361/2002 – C5-0051/2002 – 2002/0801(CNS))

(Consultation procedure)

The European Parliament,

- having regard to the initiative by of the Kingdom of Spain (5361/2002²),
 - having regard to Article 34(2)(c) of the EU Treaty,
 - having been consulted by the Council pursuant to Article 39(1) of the EU Treaty (C5-0051/2002),
 - having regard to Rules 106 and 67 of its Rules of Procedure,
 - having regard to the opinion of the Committee on Legal Affairs and Internal Market on the proposal's legal basis,
 - having regard to the report of the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs (A5-0167/2002),
1. Approves the initiative by of the Kingdom of Spain as amended;
 2. Calls on the Council to alter the text accordingly;
 3. Calls on the Council to notify Parliament should it intend to depart from the text approved by Parliament;
 4. Asks to be consulted again if the Council intends to amend the initiative by of the Kingdom of Spain substantially;
 5. Instructs its President to forward its position to the Council and Commission, and the government of of the Kingdom of Spain.

² OJ C 42, 15.02.2002, p. 14.

EXPLANATORY STATEMENT

Prominent public figures have long had to accept that their freedom to do as they wish is constrained by the needs of security, and the process of globalisation is leading to an increase in travel of such persons within the European Union. Although close cooperation already exists between the relevant national authorities, this valuable proposal from the Spanish Presidency, submitted in the light of the events of 11th September and the emergence of the suicide assassin, seeks to enable the EU improve existing cooperation and thereby take the appropriate measures to ameliorate the protection provided to public figures.

This Spanish initiative proposes to establish a *European Network for the Protection of Public Figures*, with permanent national contact points, which would have the objective of promoting close cooperation and collaboration between the appropriate departments of the Member States and the exchange of information, officials and experience concerned with the protection of public figures.

In the opinion of the rapporteur, what the EU should endeavour to do falls into two categories:

- Firstly, to ensure full cooperation between police and security agencies world-wide so that potential risks and suspect individuals, are identified, it is not enough to have merely a European Network;
- Secondly, develop systems and mechanisms that facilitate the assessment of the risk and the provision of an appropriate level of protection to the individual whilst minimising the risk and inconvenience to members of the public.

Whilst it will be beneficial to formalise and improve cooperation, it is important to recognise that the existing cooperation between the relevant Member State service in general works well and that the Member States and local services, which are in the best position to determine the risk, should continue have sufficient flexibility to ensure the appropriate measures are taken. It therefore seems premature to give the network responsibility for, for example, establishing conditions for the issue of a *common authorisation* for officials with responsibility for the protection of public figures and approximating the existing rules and regulations in each Member State.

Since the disastrous events at the Munich Olympics specialised military and para-military units have been set up by many countries and such units exchange information and training. This cooperation needs to be brought together in a more structured fashion, and therefore, in the opinion of the rapporteur, the European Network will need to include not only the participation of the police services of the participating countries, but also the national intelligence and security services. There is little point in coordinating the protection regime if the response regime is not similarly coordinated.

As regards the structure of the European Network for the Protection of Public Figures, so and as not to add to the existing police cooperation structures, the contact point of the Member State holding the Presidency of the Council of the Union should take responsibility for co-ordinating the activities of the Network. It is not necessary to have a more formalised structure although assistance can be provided by the Council Secretariat and the Legal Service of the Council. As regards the need for a computer system to facilitate exchanges of information and requests for assistance between the Member States, it should first be examined to what extent the Schengen system is an adequate system.

In addition to the Commission and Europol, the national points in the candidate States may belong to the Network. INTERPOL could also be associated with the Network. The Spanish proposal states that the Network will be financed from the European Union's budget. However, given that the Network will not have legal personality, it would be preferable if each Member State financed its own participation in the Network.

The events of September 11 have highlighted the worst that could happen, but is important that the response is measured against the real risk. Improved cooperation will enable the national authorities to make a better assessment of the risk. It may be that political figures will have to be sequestered further than in the past, but hopefully this can be avoided as contact between those who govern and the public is an important and integral part of our democracies; any erosion of that contact belittles both the politician and democracy.

OPINION OF THE COMMITTEE ON LEGAL AFFAIRS AND THE INTERNAL MARKET

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

Subject: Legal basis of the of the Spanish initiative setting up a European network for the protection of public figures - CSL 5361/02

Dear Madam President,

By letter of 18 April 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 Article 29 of the Treaty of the European Union.

The Committee on Legal Affairs and the Internal Market considered the above question at its meeting of 23 April.

The Spanish initiative

The draft decision is based on Article 29 EU Treaty. It aims at protecting public figures.

To this end, the draft decision envisages the creation of a European network, which would consist of contact points of the national police departments responsible for protecting public figures. Contact points are to be designated by each Member State, by candidate countries, the Commission and Europol.

The concept of public figures not being defined in the draft decision, it raises some doubts as to the quality of legal drafting. Furthermore, the second recital also refers to dignitaries. The initiative provides the exchange of information pertaining to the protection of public figures, as well as for the exchange of officials and experience concerned with the protection of public figures.³ The draft decision also allows for standardisation of criteria for selecting and training appropriate staff with responsibility in each Member State for the protection of public figures and for simplification of procedures by drawing up a standard form in all Member States.⁴ A further objective of the initiative is to set up a database on, in particular, assaults and attacks on public figures, case studies and methods used.⁵ Finally, the initiative sets out to approximate the existing rules and regulations in each Member State, to establish common rules to be observed in connection with accreditation and media access to the public figure involved, and to outline the conditions for provision of service by officials with

³ Article 3(a) of the draft decision.

⁴ Article 3(b) and Article 4(a) of the draft decision.

⁵ Article 3(c) of the draft decision.

responsibility for the protection of a public figure on one Member State when they are in or enter another Member State.⁶

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 fraud⁷.

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], and 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].

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. The Council may also adopt framework decisions. 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)(a), (b) and (c) EU Treaty].

Conclusion

The appropriate legal basis for the coordination and cooperation measures envisaged is Articles 29, 30(1)(a) and 34(2)(c) EU Treaty, whereas the appropriate legal basis for the measures of approximation of the laws and regulations of the Member States is Article 29, 30(1)(a) and 34(2)(b) EU Treaty.

At its meeting of 23 April 2002, the Committee on Legal Affairs and the Internal Market thus decided unanimously⁸ Articles 29, 30(1)(a) and 34(2)(c) EU Treaty is the appropriate legal basis for the adoption of measures of coordination and cooperation, whereas the appropriate legal basis for the adoption of measures of approximation of the laws and regulations of the Member States is Article 29, 30(1)(a) and 34(2)(b) EU Treaty.

Yours sincerely,

(s) Giuseppe Gargani

⁶ Article 3(d) and Article 4(c) and (g) of the draft decision.

⁷ See Article 29, second paragraph EU Treaty.

⁸ At its meeting of 23 April 2002, the following were present for the vote: Willi Rothley (acting-chairman), Ioannis Koukiadis, Bill Miller (vice-chairmen), Paolo Bartolozzi, Ward Beysen, Marie-Françoise Garaud, Evelyne Gebhardt, Fiorella Ghilardotti, Malcolm Harbour, Kurt Lechner, Neil MacCormick, Arlene McCarthy, Manuel Medina Ortega, Rijk van Dam, Rainer Wieland, Joachim Wuermeling and Stefano Zappalà.