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REPORT

on the initiative by the French Republic with a view to the adoption of a Council Decision setting up a European Judicial Training Network (13348/2000 – C5-0757/2000 – 2000/0829(CNS))

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

Rapporteur: Evelyne Gebhardt

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 20 December 2000 the Council consulted Parliament, pursuant to Article 39(1) of the EU Treaty, on the initiative by the French Republic with a view to the adoption of a Council Decision setting up a European Judicial Training Network (13348/2000 – 2000/0829(CNS)).

At the sitting of 15 January 2001 the President of Parliament announced that she had referred the initiative to the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs as the committee responsible and to the Committee on Legal Affairs and the Internal Market for its opinion (C5-0757/2000).

The Committee on Citizens' Freedoms and Rights, Justice and Home Affairs appointed Evelyne Gebhardt rapporteur at its meeting of 16 January 2001.

It considered the initiative by the French Republic and the draft report at its meetings of 23 January and 10 April 2001 and 20 February, 18 June and 2 September 2002.

At its meeting of 13 May 2002 the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs decided, pursuant to Rule 63(2) of the Rules of Procedure, to request the opinion of the Committee on Legal Affairs and the Internal Market on the legal basis.

At its meeting of 2 September 2002 the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs adopted the draft legislative resolution by 31 votes to 1.

The following were present for the vote: Jorge Salvador Hernández Mollar, chairman; Robert J.E. Evans, vice-chairman; Evelyne Gebhardt, rapporteur; Roberta Angelilli, Christian Ulrik von Boetticher, Mario Borghezio, Hans Udo Bullmann (for Carmen Cerdeira Morterero, pursuant to Rule 153(2)), Carlos Coelho, Thierry Cornillet, Gérard M.J. Deprez, Francesco Fiori (for Marcello Dell'Utri, pursuant to Rule 153(2)), Gerardo Galeote Quecedo (for Mary Elizabeth Banotti), Adeline Hazan, Margot Keßler, Timothy Kirkhope, Eva Klamt, Baroness Sarah Ludford, William Francis Newton Dunn, Marcelino Oreja Arburúa (for Giacomo Santini), Elena Ornella Paciotti, Hubert Pirker, Bernd Posselt, Martine Roure, Olle Schmidt (for Lousewies van der Laan), Patsy Sörensen, Sérgio Sousa Pinto, Joke Swiebel, Anna Terrón i Cusí, Maurizio Turco, Walter Veltroni and Olga Zrihen Zaari (for Michael Cashman).

The Committee on Legal Affairs and the Internal Market decided on 25 January 2001 not to deliver an opinion. The opinion of the Committee on Legal Affairs and the Internal Market on the legal basis is attached.

The report was tabled on 3 September 2002.

DRAFT LEGISLATIVE RESOLUTION

European Parliament legislative resolution on the initiative by the French Republic with a view to the adoption of a Council Decision setting up a European Judicial Training Network (13348/2000 – C5-0757/2000 – 2000/0829(CNS))

(Consultation procedure)

The European Parliament,

- having regard to the initiative by the French Republic¹ (13348/2000),
 - 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 (C5-0757/2000),
 - 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 (A5-0276/2002),
1. Approves the initiative by the French Republic 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 the French Republic substantially;
 5. Calls on the Commission or a Member State to propose that the Council apply Article 42 of the Treaty on European Union;
 6. Instructs its President to forward its position to the Council and Commission, and the Government of the French Republic.

¹ OJ C 18, 19.1.2001, p. 9.

Amendment 1

Title

COUNCIL DECISION 2000/ JHA

Does not apply to English version.

Justification

Does not apply to English version.

Amendment 2

Citation 1

Having regard to the Treaty on European Union, and *in particular Articles 31 and 34(2)(c) thereof*,

Having regard to the ***decision-taking procedure provided for in Article 42 of the Treaty on European Union, and having regard to Articles 65 and 67 of Title IV of the Treaty establishing the European Community,***

Justification

It would seem desirable to set up a European judicial training network not just for the field of criminal law, but also for civil law. This will help to improve knowledge of and confidence in the various national legal systems among members of the judiciary, which will foster mutual recognition, the cornerstone of judicial cooperation.

Amendment 3
Recital 1

(1) Following on from the Treaty of Amsterdam, the Vienna Action Plan and the Tampere European Council conclusions of 15 and 16 October 1999 confirmed that the creation of an area of **justice, freedom** and **security** must be given utmost priority in the European Union.

(1) Following on from the Treaty of Amsterdam, the Vienna Action Plan and the Tampere European Council conclusions of 15 and 16 October 1999 confirmed that the creation of an area of **freedom, security** and **justice** must be given utmost priority in the European Union.

Justification

The order laid down in the Treaties should be respected.

Amendment 4
Recital 1 a (new)

(1a) The creation of an area of freedom, security and justice embraces both judicial cooperation in civil matters, covered by the first pillar, and judicial cooperation in criminal matters, which is still covered by the third pillar.

Justification

Training should cover all areas of judicial cooperation in the European Union.

Amendment 5
Recital 2

(2) Full and unreserved cooperation among judicial authorities of the Member States is based on mutual understanding and trust. This therefore requires the practitioners concerned to have a better knowledge of the judicial systems of the Member States and the legal instruments on which judicial

(2) Full and unreserved cooperation among judicial authorities of the Member States is based on mutual understanding and trust. This therefore requires the practitioners concerned to have a better knowledge of the judicial **and legal** systems of the Member States and the legal instruments on which

cooperation within the European Union is based.

judicial cooperation within the European Union is based.

Justification

Knowledge should not be confined to judicial systems but should also include substantive and procedural law.

Amendment 6
Recital 3 a (new)

(3a) The Laeken European Council called for a European network to be set up as soon as possible, to promote the training of members of the judiciary and thus improve the degree of mutual confidence felt by people involved in judicial cooperation.

Justification

Self-explanatory.

Amendment 7
Recital 3 a (new)

(3a) Training in national and European judicial and legal systems is needed in all the legal professions involved in ensuring that the administration of justice operates smoothly, in particular European bars and notaries, but there is a specific urgent need to set up a European further training network for judges and prosecutors without delay,

Justification

Self-explanatory.

Amendment 8
Recital 7

(7) This network, ***the activities of which will initially be confined to matters covered by Article 31 of the Treaty***, should be made up of national schools and institutions of the Member States responsible specifically for training ***professional judges and prosecutors who are*** members of the judiciary.

(7) This network should be made up of national schools and institutions of the Member States responsible specifically for training members of the judiciary ***and, where appropriate, members of the prosecution services.***

Justification

Judicial systems vary very substantially. In addition to judges, lay judges, police officers who act as public prosecutors or lawyers may have a judicial role. In order to ensure that important groups of persons are not excluded, a more abstract term must be employed.

Amendment 9
Article 2, paragraph 1

1. The Network shall be made up of national schools and institutions of the Member States specifically responsible for training ***professional judges and prosecutors for the Member States in which the latter form part*** of the judiciary.

1. The Network shall be made up of national schools and institutions of the Member States specifically responsible for training ***members*** of the judiciary ***and, where appropriate, members of the prosecution services.***

Justification

Judicial systems vary very substantially. In addition to judges, lay judges, police officers who act as public prosecutors or lawyers may have a judicial role. In order to ensure that important groups of persons are not excluded, a more abstract term must be employed.

Amendment 10
Article 2, paragraph 2

2. Each Member State shall appoint up to three training officers to represent it in the Network.

2. The Network shall comprise the training officers from the training centres. If several training officers come from the same Member State, they shall form a delegation.

Justification

The Member States' training systems vary very substantially. A degree of flexibility is required in order to take account of this diversity.

Amendment 11
Article 3, paragraph 1

1. In the areas referred to in Article 31 of the Treaty, the mandate of the Network shall be to foster consistency and efficiency in the training activities carried out by the members of the judiciary of the Member States.

1. The mandate of the Network shall be to foster consistency and efficiency in the training activities carried out by the members of the judiciary of the Member States.

Justification

Voluntary judicial training should not be confined to criminal law, but should also cover civil law.

Amendment 12
Article 3, paragraph 2, letters (a) and (b)

2. To fulfil the mandate referred to in paragraph 1, the Network shall pursue the following objectives in particular:

(a) further mutual knowledge of the legal and judicial systems of the Member States;

(b) *develop* knowledge and *improve the* use of European and international instruments in force within the European Union;

2. To fulfil the mandate referred to in paragraph 1, the Network shall pursue the following objectives in particular:

(a) further mutual knowledge of the legal and judicial systems of the Member States *and the European Union*;

(b) *improve* knowledge and use of European and international instruments in force within the European Union;

Justification

Clarification of the objectives being pursued.

Amendment 13
Article 3, paragraph 2, letter (f)

(f) provide the European institutions, the judicial authorities of the Member States, members of the European Judicial Network created by Joint Action 98/428/JHA and any other entity responsible for judicial cooperation *in criminal matters* within the European Union with consistent and regularly updated training tools;

(f) provide the European institutions, the judicial authorities of the Member States, members of the European Judicial Network created by Joint Action 98/428/JHA and any other entity responsible for judicial cooperation within the European Union with consistent and regularly updated training tools;

Justification

The training tools should be provided to all bodies in the European Union responsible for judicial cooperation.

Amendment 14
Article 4, paragraph 2, letter (a)

- (a) - understanding of European judicial systems;
- knowledge of judicial cooperation mechanisms;
- language skills;

- (a) - understanding of ***national and European legal and*** judicial systems;
- knowledge of judicial cooperation mechanisms ***and the substance of legislation;***
- language skills;

Justification

Given that judicial cooperation is largely based on the principle of mutual recognition and that knowledge of substantive law at both European and national level may be a prerequisite for efficient judicial cooperation, it must be made clear that the aim is to impart knowledge about both European and national legal and judicial systems and the substance of the relevant legislation.

Amendment 15
Article 6, paragraph 1, letter (a)

- (a) a secure electronic information exchange network, ***access to which shall be limited to Network*** members;

- (a) a secure electronic information exchange network ***for members of the judiciary;***

Justification

As many members of the judiciary as possible must be reached.

Amendment 16
Article 7, paragraph 1

1. The bodies of the Network shall be the Governing Board and the General Secretariat. The Network shall be assisted by a Scientific Committee.

1. The bodies of the Network shall be the Governing Board and the General Secretariat. The Network shall be assisted by a Scientific Committee.

The General Secretariat shall assist the European Judicial Training Network in the performance of its administrative tasks and the implementation of the programme of activities.

The General Secretariat shall be provided by the Commission.

The General Secretariat shall be provided ***temporarily*** by the Commission. ***Two years after the entry into force of this Decision, the Commission shall carry out an assessment; thereafter, the Governing Board may decide to change the location of the General Secretariat.***

Justification

The additional paragraph aims to accentuate the technical and supportive nature of the General Secretariat.

During the initial period, the Commission can establish procedures whilst providing the General Secretariat. Thereafter, it might be appropriate to change the location of the General Secretariat.

Amendment 17 Article 7, paragraph 2

2. The Governing Board shall be made up of Network members, designated by the Member States pursuant to Article 2(2), ***a Commission representative, a representative*** of the General Secretariat of the Council and ***a representative of the Council of Europe***. A representative of the Member State holding the Presidency of the Council shall act as Chairman of the Governing Board, assisted by a representative of the next Presidency.

2. The Governing Board shall be made up of Network members, designated by the Member States pursuant to Article 2(2). ***Each delegation shall have one vote. Representatives*** of the General Secretariat of the Council and ***the Commission may attend meetings***. A representative of the Member State holding the Presidency of the Council shall act as Chairman of the Governing Board, assisted by a representative of the next Presidency.

Justification

Self-explanatory.

Amendment 18
Article 8, paragraph 2

2. The Scientific Committee shall ***be consulted when*** the programme of activities referred to in Article 4 ***is being drawn up***.

2. The Scientific Committee shall ***draw up*** the programme of activities referred to in Article 4.

Justification

The specialist knowledge of a Scientific Committee should be exploited to the full.

Amendment 19
Article 9, paragraph 1

1. ***After having sought proposals from Network members***, the Secretary-General shall ***draw up the draft*** programme of activities.

1. The Secretary-General shall ***put*** the programme of activities ***to the Governing Board on the basis of the draft prepared by the Scientific Committee***.

Justification

Self-explanatory.

Amendment 20
Article 9, paragraph 5 a (new)

(5a) Representatives of the Council of Europe may be invited to attend meetings of the Scientific Committee.

Justification

The Council of Europe's expertise may be a useful source of inspiration when setting up the Network's programme of activities.

Amendment 21
Article 10, paragraph 1

1. The Secretary-General shall draw up the draft rules of procedure, which shall be adopted **unanimously** by the members of the Network. **If, pursuant** to Article 2(2), a Member State **has designated several training officers to represent it, that State shall nevertheless** have only one vote.

1. The Secretary-General shall draw up the draft rules of procedure, which shall be adopted **by a qualified majority of two thirds of** the members of the Network. **Pursuant** to Article 2(2), **each** Member State shall have only one vote.

Justification

In order to give the network the necessary flexibility it seems preferable to adopt and amend the rules of procedure by qualified majority. Furthermore in keeping with the amendment to Article 2(2).

Amendment 22
Article 12

The Members of the Network may continue to apply for funding from the relevant European institutions. **However, they shall be obliged to inform** the Secretary-General of the Network of these applications for funding, and **give details** of the training activities for which these applications have been lodged.

The Members of the Network may continue to apply for funding from the relevant European institutions. The Secretary-General of the Network **shall be informed** of these applications for funding and of the training activities for which these applications have been lodged.

Justification

The Secretary-General must be provided with comprehensive information in order to prevent double applications.

Amendment 23
Article 13, paragraph 2

2. The report referred to in paragraph 1 shall be made available on the electronic information exchange system referred to in Article 6, as well as on the world-wide-web sites of the Commission and of the Network. The report shall be forwarded to the Commission, the European Parliament, the Council **and** the Economic and Social Committee.

2. The report referred to in paragraph 1 shall be made available on the electronic information exchange system referred to in Article 6, as well as on the world-wide-web sites of the Commission and of the Network. The report shall be forwarded to the Commission, the European Parliament, the Council, the Economic and Social Committee **and the Council of Europe**.

Justification

Self-explanatory.

EXPLANATORY STATEMENT

By letter of 20 December 2000 the Council consulted Parliament on a French initiative for adoption of a Council decision setting up a European judicial training network. The initiative was submitted by the Council to Parliament pursuant to Article 39 of the Treaty on European Union (EU Treaty). The Member States broadly welcomed the initiative, though some Member States expressed reservations, particularly concerning the legal basis selected.

The Bordeaux Network

The network proposed in the initiative is intended to provide voluntary training for members of the judiciary. Such a network already exists, set up in October 2000 at an informal level through the adoption of the Charter of the Réseau européen de formation judiciaire. A number of national training agencies, with specific responsibility in their countries for the training of members of the judiciary, belong to this network. The network consists of a general meeting, the Board of Governors and a secretariat (Article 5 of the Charter of the Bordeaux Network). The European Academy for Legal Sciences in Trier (ERA) is provisionally responsible for the general secretariat. The Charter is expressly designed for subsequent recognition of the European Bordeaux network for judicial training by a measure at European level, as the French initiative intends. This is desirable, because the Bordeaux Network does not have legal personality and thus cannot obtain any funding from the Community budget or the Member States.

Your rapporteur shared the reservations vis-à-vis the French initiative concerning the form and organisation of the network. Accordingly, in April 2001 she submitted to Parliament's Committee on Citizens' Freedoms and Rights, Justice and Home Affairs a (technical) draft report proposing the rejection of the French initiative. At the same time, she called on the Board of Governors of the Bordeaux Network to draw up an alternative proposal. In the light of this compromise proposal, and given the importance of the topic, your rapporteur is happy to submit her new report.

The Treaty of Amsterdam

With the entry into force of the Treaty of Amsterdam, the European Union set itself the aim of creating an area of freedom, security and justice, in the words of Article 2, fourth indent, of the EU Treaty. The nature of this area is outlined in further detail in Title VI of the EU Treaty and Title IV of Part Three of the Treaty establishing the European Community (EC Treaty). Article 61 stipulates that, in order to establish progressively an area of freedom, security and justice, the Council shall adopt measures in the field of judicial cooperation in civil matters as provided for in Article 65. Article 65 of the EC Treaty states that this also includes measures for the recognition and enforcement of decisions in civil and commercial cases. The objective of an area of freedom, security and justice is repeated in Article 29 of the EU Treaty, which specifies that 'without prejudice to the powers of the European Community, 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 (...)'. The objectives of an area of freedom, security and justice were established and further developed in the Vienna action plan and the conclusions of the Tampere European Council of 15 and 16 October 1999.

Mutual recognition

It is clear from the conclusions of the Tampere European Council that mutual recognition must be the cornerstone of judicial cooperation in both civil and criminal matters. This is essential if an area of freedom, security and justice is to be established, thereby strengthening and deepening EU integration. This will only be possible, however, if acceptance of and confidence in the judicial systems of the other Member States are fostered among the members of the relevant professions. Mutual recognition means that a judicial measure is recognised without further investigation, as if it were a decision by a country's own legal system. Recent developments underline the importance of voluntary training for members of the judiciary. For instance, it is clear from the report on the activities of Pro Eurojust (2000)¹ that it is not always easy for legal practitioners in different Member States to work together efficiently, for instance because of differences in legislation or insufficient language knowledge. Problems of this kind have already been highlighted in the final report on the evaluation of the agreement on mutual legal assistance in criminal matters². The availability of training is also important in the light of the Council framework decision for a European arrest warrant, which the Member States must transpose by 1 January 2004. For this reason the Laeken European Council called for a European network to be set up as soon as possible to promote the training of members of the judiciary, so as to increase mutual confidence between persons involved in judicial cooperation.

The present French initiative has taken as the legal basis Articles 31 and 34(2)(c) of the EU Treaty, and applies only to voluntary training in the field of criminal law. The rapporteur is proposing to extend the scope of the initiative so as to cover training in the field of civil law as well.

Delimitation with regard to existing networks

The proposed European judicial training network is the first example of structured cooperation in the field of the training of members of the judiciary. No such network is currently in operation and it is an extremely valuable addition to the existing arrangements. It should not be confused with:

1. The European Judicial Network (for criminal matters)³

This network was set up by the Council by a Joint Action of 29 June 1998. It establishes a network of judicial contact points between Member States to facilitate judicial cooperation between Member States, particularly in the field of serious crime. The network does not have legal personality or a budget.

2. The European judicial network in civil and commercial matters⁴

¹ Note by the Council of 20 December 2001, No 15545/01, on the report on Pro Eurojust for the year 2000.

² See Final Report on the first evaluation exercise — mutual legal assistance in criminal matters, OJ C 216, 1.8.2001, p. 14.

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

⁴ Council Decision of 28 May 2001 establishing a European judicial network in civil and commercial matters, OJ L 174, 27.6.2001, p. 25.

This network was set up by a Council decision of 28 May 2001, and consists of a number of national contact points. The network's task is comparable with the role of the European judicial network, that is, to improve judicial cooperation between Member States in civil and commercial matters, including the establishment of an information system for the network that is also accessible by the public. This network has a budget, but no legal personality.

3. The European Police College¹

The European Police College was set up by a Council decision of 22 December 2000. It takes the form of a network created by linking national training establishments for senior management staff of the Member States' police forces. It does not have legal personality and is financed by contributions from the Member States.

4. European crime prevention network²

The European crime prevention network was set up by a Council decision of 28 May 2001. It consists of contact points specified by the Member States. Crime prevention covers any measures to deal with crime and reduce feelings of insecurity among the general public. The network's secretariat and its activities are funded out of the European Union's general budget.

5. Framework programme for European Union activities in the field of civil and criminal law³

Proposed by the Commission on 9 November 2001, the programme's purpose is to incorporate the existing instruments, Grotius II Criminal, Oisin II, STOP II, Hippocrates and Falcone, in a single instrument. The programmes are designed to improve cooperation between legal practitioners and between services for the prevention and combating of crime in the Member States. It supports projects in the field of general and criminal judicial cooperation.

6. Proposal for a Council regulation establishing a general framework for Community activities to facilitate the implementation of a European judicial area in civil matters⁴

The regulation creates a legal basis to fund Community activities from the budget of the European Communities in the field of judicial cooperation in civil matters. It includes provision to continue activities being assisted under the Grotius (civil law) programme.

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

² Council Decision of 28 May 2001 setting up a European crime prevention network.

³ COM(2001) 646 final.

⁴ OJ L 115, 1.5.2002, p. 1.

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

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

Subject: Legal basis of the initiative of the French Republic with a view to the adoption of a Council Decision setting up a European Judicial Training network - 13348/2000 - C5-0757/2000 - 829/2000(CNS)

Dear Madam President,

By letter of 12 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 Articles 31 and 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 April in Strasbourg and at its meetings of 20 June and 10 July in Brussels.

A number of Member State initiatives have been adopted in the area of crime prevention and combat.

Firstly, joint action 96/277/JHA¹ concerns a framework for the exchange of liaison magistrates to improve judicial cooperation between the Member States. It aims at creating a framework for the exchange of liaison magistrates in order to increase the speed and effectiveness of judicial cooperation and to promote the pooling of information on the legal and judicial systems of the Member States and to improve their operation.²

Secondly, joint action 98/427/JHA³ concerns good practice in executing requests from other Member States and sending requests to other Member States for legal assistance in criminal matters.

¹ Joint action of 22 April 1996 adopted by the Council on the basis of Article K.3 of the Treaty on European Union, concerning a framework for the exchange of liaison magistrates to improve judicial cooperation between the Member States of the European Union (96/277/JHA), OJ L 105 of 27.4.1996 at 1.

² Article 1(3) of joint action 96/277/JHA.

³ Joint action of 29 June 1998 adopted by the Council on the basis of Article K.3 of the Treaty on European Union, on good practice in mutual legal assistance in criminal matters (98/427/JHA), OJ L 191 at 1.

Thirdly, Council decision 2001/427/JHA¹, adopted on the basis of a Franco-Swedish initiative, sets up a European crime prevention network in order to support actions undertaken by Member States in this area. The network is composed of contact points in each Member State. The network is to contribute to developing the various aspects of crime prevention at Union level and to support crime prevention activities at local and national level.

The aim of the initiative is to ensure cooperation among judicial authorities of the Member States.²

Its content is the creation of a European judicial training network. The network is to be made up of national schools and institutions of the Member States specifically responsible for training professional judges and prosecutors for the Member States in which the latter form part of the judiciary.³

The mandate of the network is to foster consistency and efficiency in the training activities carried out by the members of the judiciary of the Member States. Its mandate is limited to the areas referred to in Article 31 EU Treaty.⁴

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 fraud⁵.

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].

In your letter dated 12 April 2002, you inquire whether Article 42 EU Treaty could serve as legal basis. According to the rapporteur, this would allow the adoption of a single legal act providing for an identical European training network concerning judicial cooperation in both criminal and civil matters.

¹ Council decision of 28 May 2001 setting up a European crime prevention network (2001/427/JHA), OJ L 153 of 8.6.2001 at 1.

² Recital 2 of the draft Council decision.

³ article 2 of the draft Council decision.

⁴ Article 3(1) EU Treaty.

⁵ See Article 29, second paragraph EU Treaty.

Article 42 EU creates a bridge between the third and first pillars. Pursuant to this provision, the Council - acting unanimously on the initiative of the Commission or a Member State, and after consulting the European Parliament - may decide that action in areas referred to in Article 29 shall fall under Title IV of the EC Treaty (visas, asylum, immigration and other policies related to free movement of persons). At the same time, the Council is to determine the relevant voting conditions relating to it.

In order to establish an area of freedom, security and justice, under Title IV of the EC Treaty, the Council is to adopt measures in the field of judicial cooperation in civil matters, and measures in the field of police and judicial cooperation in criminal matters aimed at a high level of security by preventing and combating crime within the Union in accordance with the provisions of the Treaty on European Union.¹

Pursuant to Article 65 EC, measures in the field of judicial cooperation in civil matters having cross-border implications are to be taken in accordance with Article 67 and insofar as necessary for the proper functioning of the internal market.

Article 67 EC provides for a transitional period of five years following the entry into force of the Treaty of Amsterdam. During this period, the Council is to act unanimously on a proposal from the Commission or on the initiative of a Member State and after consulting the European Parliament. It should be noted that the consultation procedure improves the position of the European Parliament quite remarkably compared to its role in the framework of the third pillar, however one still may ask whether this improvement of parliamentary control at European level is sufficient given the new legal quality of instruments that are adopted under Title IV in the EC Treaty. Instruments adopted in the framework of the third pillar do not have any legal effect within the national law of Member States without a corresponding national legal act adopted by the competent national body, whereas on the basis of Title IV of the EC Treaty, the Council adopts Community law acts with direct effect and primacy over national law in areas closely connected with fundamental rights.

The draft Council decision does not currently encompass judicial cooperation in civil matters.²

The ultimate aim of the initiative is to foster judicial cooperation among judicial authorities of the Member States.³ This aim is confirmed by the third recital which declares that "Training for members of the judiciary in the Member States is a *sine qua non* for the success of the European judicial area. It makes the use of existing legal instruments more effective and facilitates the practical implementation of new cooperation instruments". Finally, training is meant to help "create a genuine European judicial culture".⁴

The initiative's aim is therefore to foster judicial cooperation among the judiciary, thereby giving greater coherence and offering a degree of continuity to existing training exchanges and activities.

¹ Article 61(c) and (e) EC Treaty.

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

³ Second recital.

⁴ Fourth recital.

To this end, the initiative sets up a European judicial training network¹ made up of national schools and institutions of the Member States specifically responsible for training professional judges and prosecutors for the Member States in which the latter form part of the judiciary.²

It is clear from settled case law of the ECJ that the choice of the legal basis does not depend on the discretion of the Community legislature but must be based on objective elements which are amenable to judicial control. Among these elements are, in particular, the aim and the content of the legal act³. The legal basis on which an act must be adopted should be determined according to its main object.⁴

It is also necessary to determine whether the measures in question relate principally to a particular field of action, having only incidental effects on other policies, or whether both aspects are equally essential.

If the first hypothesis is correct, recourse to a single legal basis is sufficient⁵; if the second is correct, it is insufficient⁶ and the institution is required to adopt the measure on the basis of both of the provisions from which its competence derives.⁷ However, no such dual basis is possible where the procedures laid down for each legal basis are incompatible with each other.⁸ Therefore, this hypothesis is to be discarded in the present case.

In light of the abovementioned considerations, and of the opinion of the Legal Service, the Committee on Legal Affairs and the Internal Market decided unanimously⁹ that the adequate legal basis of the French initiative is Article 31(a) and 34(2)(c) of the EU Treaty.

Yours sincerely,

(s) Giuseppe Gargani

¹ Article 1.

² Article 2 and seventh recital.

³ See, *inter alia*, ECJ, case C-42/97, *Parliament v Council*, para. 36.

⁴ Case C-155/91 *Commission v Council* [1993] ECR I-939, paragraphs 19 to 21

⁵ Case C-70/88 *Parliament v Council* [1991] ECR I-4529, paragraph 17, and Case C-271/94 *Parliament v Council* [1996] ECR I-1689, paragraphs 32 and 33.

⁶ Case 242/87 *Commission v Council* [1989] ECR 1425, paragraphs 33 to 37, and Case C-360/93 *Parliament v Council* [1996] ECR I-1195, paragraph 30.

⁷ Case 165/87 *Commission v Council* [1988] ECR 5545, paragraphs 6 to 13.

⁸ Case C-300/89 *Commission v Council* [1991] ECR I-2867, paragraphs 17 to 21.

⁹ At its meeting of 10 July 2002, the following were present: Giuseppe Gargani (chairman), Willi Rothley (vice-chairman), Brian Crowley (rapporteur), Bert Doorn, Francesco Fiori (for Klaus-Heiner Lehne), Janelly Fourtou, Fiorella Ghilardotti, Malcolm Harbour, Heidi Anneli Hautala, Kurt Lechner, Toine Manders, Angelika Niebler, Marianne L.P. Thyssen, Joachim Wuermeling and Stefano Zappalà.