

# EUROPEAN PARLIAMENT

1999



2004

---

*Session document*

FINAL  
**A5-0317/2000**

30 October 2000

\*

## **REPORT**

on the initiative of the Portuguese Republic, the French Republic, the Kingdom of Sweden and the Kingdom of Belgium with a view to adopting a Decision setting up a Provisional Judicial Cooperation Unit (10356/2000 - C5-0395/2000 - 2000/0816 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)

## CONTENTS

	<b>Page</b>
PROCEDURAL PAGE .....	4
LEGISLATIVE PROPOSAL .....	5
DRAFT LEGISLATIVE RESOLUTION .....	11
EXPLANATORY STATEMENT .....	12
OPINION OF THE COMMITTEE ON LEGAL AFFAIRS AND THE INTERNAL MARKET .....	18

## PROCEDURAL PAGE

By letter of 27 July 2000 the Council consulted Parliament, pursuant to Article 39(1) of the Treaty on European Union, on the initiative of the Portuguese Republic, the French Republic, the Kingdom of Sweden and the Kingdom of Belgium with a view to adopting a Decision setting up a Provisional Judicial Cooperation Unit (10356/2000 - 2000/0816 CNS)).

At the sitting of 4 September 2000, the President of Parliament announced that she had referred this initiative to the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs as the committee responsible (C5-0395/2000).

At its meeting of 29 August 2000, the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs had appointed Evelyne Gebhardt rapporteur.

By letter of 16 October 2000, the committee requested the opinion of the Committee on Legal Affairs and the Internal Market on the legal basis of the initiative, pursuant to Article 63(2) of the Rules of Procedure.

The committee considered the initiative of the Portuguese Republic, the French Republic, the Kingdom of Sweden and the Kingdom of Belgium and the draft report at its meetings of 4 September 2000, 19 September 2000, 11 October 2000, and 23 October 2000.

At the last meeting it adopted the draft legislative resolution by 32 votes to 5, with 0 abstentions.

The following were present for the vote: Graham R. Watson, chairman; Robert J.E. Evans and Bernd Posselt, vice-chairmen; Evelyne Gebhardt, rapporteur; Jan Andersson (for Adeline Hazan), Roberta Angelilli, Alima Boumediene-Thiery, Rocco Buttiglione, Marco Cappato, Michael Cashman, Charlotte Cederschiöld, Carlos Coelho, Thierry Cornillet, Gérard M.J. Deprez, Giorgos Dimitrakopoulos (for Enrico Ferri), Francesco Fiori (for Marcello Dell'Utri pursuant to Rule 153(2)), Pernille Frahm, Bertel Haarder (for Jan-Kees Wiebenga), Jorge Salvador Hernández Mollar, Anna Karamanou, Margot Keßler, Ewa Klamt, Alain Krivine (for Fodé Sylla), Baroness Sarah Ludford, Minerva Melpomeni Malliori (for Sérgio Sousa Pinto), Lucio Manisco (for Giuseppe Di Lello Finuoli), Hartmut Nassauer, William Francis Newton Dunn (for Timothy Kirkhope), Arie M. Oostlander (for Daniel J. Hannan), Elena Ornella Paciotti, Hubert Pirker, Martin Schulz, Patsy Sörensen, Joke Swiebel, Anna Terrón i Cusí, Maurizio Turco (for Frank Vanhecke) and Gianni Vattimo.

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

The report was tabled on 30 October 2000.

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

## LEGISLATIVE PROPOSAL

### Initiative of the Portuguese Republic, the French Republic, the Kingdom of Sweden and the Kingdom of Belgium with a view to adopting a Decision setting up a Provisional Judicial Cooperation Unit (10356/2000 - C5-0395/2000 - 2000/0816 CNS))

The initiative is amended as follows:

Text proposed by the Portuguese Republic, the French Republic, the Kingdom of Sweden and the Kingdom of Belgium<sup>1</sup>

---

Amendments by Parliament

---

(Amendment 1)  
First citation

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

Having regard to Title VI of the Treaty on European Union, and in particular Articles **29**, 31 and 34(2)(c) thereof,

*Justification:.*

*In view of the Unit's proposed remit it would be reasonable also to take Article 29 of the TEU as a basis. This article underlines the purpose of Eurojust: 'to provide citizens with a high level of safety within an area of freedom, security and justice'.*

(Amendment 2)  
Recital 3

(3) The conclusions of the European Council in Tampere on 15 and 16 October 1999, in particular paragraph 46 thereof, concern the setting up of a unit (Eurojust) composed of prosecutors, magistrates or police officers of equivalent competence, to reinforce the fight against serious organised crime.

(3) The conclusions of the European Council in Tampere on 15 and 16 October 1999, in particular paragraph 46 thereof, concern the setting up <sup>2</sup>*by the end of 2001* of a unit (Eurojust) composed of prosecutors, magistrates or police officers of equivalent competence, to reinforce the fight against serious organised crime.

---

<sup>1</sup> OJ C243, 24.8.2000, P.21

<sup>2</sup>

(Amendment 3)  
Recital 4a (new)

*(4a) In the collection, processing and utilisation of personal data the Provisional Judicial Cooperation Unit shall take account of the principles of the Council of Europe Convention of 28 January 1981 and of Recommendation (87)15 of the Committee of Ministers of the Council of Europe of 17 September 1987 and in any event shall observe the rules applied in the various Member States. This shall apply to any set of personal data.*

*Moreover, to ensure that individuals are effectively protected in relation to the processing of personal data in cases where such data are exchanged, consistency must be achieved in the corresponding rules and procedures to be applied to the activities covered by the various legal frameworks; the formulation of fundamental principles concerning the protection of personal data in the field of judicial cooperation in criminal matters and cooperation between police and customs authorities represents a first step in that direction.*

*Justification:*

*Parliament has already pointed to the need for uniform principles to guarantee that personal data will be protected, not least where third pillar activities are concerned. The Council takes an essentially similar view.*

(Amendment 4)  
Recital 5

(5) The meetings of such a provisional unit should be supported by the infrastructures of the Council, *as its experience would be of*

(5) The meetings of such a provisional unit should be supported by the infrastructures of the Council *and of the Commission, in*

*value in drafting the act establishing Eurojust,*

*accordance with the powers assigned to them by the Treaties.*

*Justification:*

*The closer judicial cooperation in criminal matters becomes, the more important it will be to have the support of the Commission.*

(Amendment 5)  
Recital 5a (new)

***(5a) New European Union structures, such as the provisional unit that is now to be set up, to ensure close judicial cooperation between the Member States must comply with the principles of criminal law and procedure, particularly in relation to the protection of human rights, the right to be defended and the protection of personal data, which are enshrined in the legislation of the Member States.***

*Justification:*

*Self-explanatory.*

(Amendment 6)  
Recital 5b (new)

***(5b) The experience gained from the operation of such a provisional unit will serve as a basis for the drafting of the act establishing Eurojust.***

(Amendment 7)  
Recital 5c (new)

***(5c) Member States may assign police officers of equivalent competence only if,***

***under their legal system, the police performs the tasks of a public prosecution service.***

*Justification:*

*The purpose of the unit is to facilitate judicial cooperation, not police cooperation. The only police officers involved should be from Member States which do not have a separate public prosecution service and in which, consequently, that role is performed by the police.*

(Amendment 8)  
Recital 5d (new)

***(5d) One objective of the provisional unit shall be to assist in the establishment of Eurojust.***

*Justification:*

*The rapporteur accepts the proposal that Eurojust be established in two stages, on condition that active use is made of the experience gained by the provisional unit when Eurojust is set up.*

(Amendment 9)  
Recital 5e (new)

***(5e) The provisional unit may ascertain how to establish effective cooperation with Europol, the European Judicial Network and, possibly, other bodies, with a particular view to avoiding duplication of effort and conflicts over their respective powers.***

*Justification:*

*Self-explanatory.*

(Amendment 10)  
Article 1(1)



1. Each Member State shall assign to its Permanent Representation to the European Union a prosecutor, magistrate, or police officer of equivalent competence, to perform the *liaison* duties necessary to accomplish the aims and tasks referred to in paragraph 2. The fifteen members thus appointed shall meet in Brussels, supported by the infrastructures of the Council, in a formation known as the "Provisional Judicial Cooperation Unit".

**1. In accordance with the criteria set out in the new recital 5a**, each Member State shall assign to its Permanent Representation to the European Union a prosecutor, magistrate or, **if its judicial system makes no provision for a public prosecutor and that office is performed by the police**, a police officer of equivalent competence, to perform the duties necessary to accomplish the aims and tasks referred to in paragraph 2. The fifteen members thus appointed shall meet in Brussels, **either at the General Secretariat of the Council or at the Commission**, supported by the infrastructures of the Council **or the Commission**, in accordance with the powers assigned to them by the Treaties, in a formation known as the "Provisional Judicial Cooperation Unit".

*Justification:*

*As in the case of recital 5b(new), it may be useful to stress that police officers may be assigned to the unit only if their Member States have no public prosecutors and the role played by the latter is performed by the police.*

(Amendment 11)  
Article 1(2)

2. In close cooperation with the General Secretariat of the Council and the European Judicial Network, those persons shall:

In close cooperation with the General Secretariat of the Council and the European Judicial Network, those persons shall:

(a) **within the scope of** each Member State's national legislation, **help to ensure** proper coordination between the competent national authorities with regard to investigations and prosecutions involving two or more Member States and requiring **coordinated** action;

(a) **with due respect to** each Member State's national legislation, **strengthen** proper coordination **and close cooperation** between the competent national authorities with regard to investigations and prosecutions involving two or more Member States and requiring **joint** action;

(b) facilitate judicial cooperation in criminal matters between the competent authorities of the Member States;

(b) facilitate judicial cooperation in criminal matters between the competent authorities of the Member States;

(c) assist Member States and the Council,

(c) assist Member States and the Council

*as necessary*, with a view to the negotiation and adoption by the Council of the act establishing Eurojust.

with a view to the negotiation and adoption by the Council of the act establishing Eurojust.

*Justification:*

*To achieve a qualitative improvement in the area of judicial cooperation, cooperation between the relevant authorities must not just be coordinated, but strengthened. Joint action must be achieved with regard to investigations and prosecutions.*

*The rapporteur accepts the proposal that Eurojust be established in two stages, on condition that active use is made of the experience gained by the provisional unit when Eurojust is set up.*

(Amendment 12)  
Article 1(3) (new)

***3. The Commission shall be fully associated with the work of the provisional unit in accordance with Article 36(2) of the TEU, and in particular will be placed in a position to contribute to that work in the light of its own experience in the sectors falling within its province.***

*Justification:*

*The proposed provision is consistent with recital 5 as amended in the draft report (rapporteur's Amendment 3), Article 36(2) of the TEU and the text of the last draft decision of the Council of 28 September 2000, which makes provision for the Commission to be associated with the work of the provisional unit.*

(Amendment 13)  
Article 2

This decision shall take effect on the day of its adoption.

This decision shall take effect on the day of its adoption.

It shall cease to apply on the date on which the instrument establishing Eurojust takes effect.

It shall cease to apply on the date on which the instrument establishing Eurojust takes effect, ***which is scheduled to occur before the end of 2001.***

## DRAFT LEGISLATIVE RESOLUTION

**Legislative resolution embodying Parliament's opinion on the initiative of the Portuguese Republic, the French Republic, the Kingdom of Sweden and the Kingdom of Belgium with a view to adopting a Decision setting up a Provisional Judicial Cooperation Unit (10356/2000 - C5-0395/2000 - 2000/0816 CNS))**

### **(Consultation procedure)**

*The European Parliament,*

- having regard to the initiative of the Portuguese Republic, the French Republic, the Kingdom of Sweden and the Kingdom of Belgium with a view to adopting a Decision setting up a Provisional Judicial Cooperation Unit (10356/2000<sup>1</sup> - 2000/0816(CNS)),
  - having regard to Article 34(2)(c) of the EU Treaty,
  - having been consulted by the Council pursuant to Article 39(1) of the Treaty on European Union (C5-0395/2000),
  - 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 (A5-0317/2000),
1. Approves the initiative of the Portuguese Republic, the French Republic, the Kingdom of Sweden and the Kingdom of Belgium, subject to Parliament's amendments;
  2. Calls on the Council to notify Parliament should it intend to depart from the text approved by Parliament;
  3. Asks to be consulted again should the Council intend to make substantial amendments to the initiative of the Portuguese Republic, the French Republic, the Kingdom of Sweden, and the Kingdom of Belgium;
  4. Instructs its President to forward this opinion to the Council, the Commission and the governments of the Portuguese Republic, the French Republic, the Kingdom of Sweden and the Kingdom of Belgium.

---

<sup>1</sup> OJ C 243, 24.8.2000, p. 21.

## **EXPLANATORY STATEMENT**

### **The establishment of Eurojust as a means of upholding the rule of law**

Europol, the police authority, and OLAF, the European Anti-Fraud Office, are confronted with a makeshift system of judicial cooperation in criminal matters based on contacts between liaison magistrates and the European Judicial Network. In addition, the Commission is planning to set up a European public prosecution service to protect the European Union's financial interests.

The proposed setting-up of Eurojust is therefore to be welcomed. The Council has thereby taken a first step towards institutionalising the process of judicial cooperation, as has been called for by the European Parliament for a long time. For it is essential, if the rule of law is to be upheld, for judicial cooperation in criminal matters to be developed in line with the competences of Europol.

Eurojust must, consequently, be so constituted that it can be regarded as a forerunner of a future European public prosecution service designed to strengthen the European Union's judicial dimension in relation to criminal law.

But institutionalisation alone is not enough. The Council must draw up, in cooperation with the European Parliament and the Commission, appropriate rules of law on the basis of which Eurojust will be able to operate. Parliament has already indicated the form that such a 'corpus juris' might take.

The acquisition of such a body of law would enable the European Union to clearly counter the charge that its structures were undemocratic because it did not possess an independent legislative, executive and judiciary with counterbalancing powers, the hallmark of all democratic societies.

### **The Provisional Judicial Cooperation Unit**

The initiative of Portugal, France, Sweden and Belgium with a view to adopting a Council Decision on setting up a provisional judicial cooperation unit was referred to the European Parliament for its opinion together with a further initiative by the same countries concerning the setting-up of Eurojust itself and a German text in the same area.

The mandate set by the European Council in Tampere was, however, clearer than might be supposed from this plethora of texts. At the summit held in Tampere on 14 to 16 October 1999 the Council decided, on a proposal from the German Minister of Justice, to set up a unit (Eurojust) to reinforce the Member States' cooperation in the fight against organised crime. From 2002 onwards, prosecutors, magistrates or senior police officers seconded from all the Member States should coordinate the national public prosecution services and assist criminal investigations in cases involving organised crime. The unit would be expected to cooperate closely with Europol and the European Judicial Network.

Your rapporteur accepts the proposal that Eurojust be introduced in two stages provided that the form Eurojust eventually takes is not determined in advance by the setting-up of the provisional judicial cooperation unit, and the lessons learned from the experience of the latter are actively incorporated in the arrangements for Eurojust itself. Your rapporteur assumes that Eurojust, in turn, can only be a forerunner of an eventual European public prosecution service. This means that, in preparing to review the treaties, the governments must identify an appropriate legal basis. It also means that they must take into account the European public prosecution service to protect the financial interests of the European Union which the Commission and the European Parliament have called for.

## **Background**

The history of judicial cooperation is much shorter than that of political cooperation, as it was launched only on the basis of the European Single Act in the mid-1980s. The rise of organised transnational crime demanded a joint approach, which was gradually developed further under the Treaties of Maastricht and Amsterdam (Title VI). It still falls under the heading of intergovernmental cooperation, however, an area in which the Commission has been able to take initiatives only since 1 May 1999, with all that that implies in terms of the lack of democratic legitimacy at European level.

Despite the opportunities that have been offered by the Treaties since 1992, the Member States have primarily been concerned with concluding agreements in the field of judicial cooperation, although frequently only subject to various reservations. The application of such agreements has been hampered up to now by various contradictions between them, or with Council of Europe conventions, but above all by the fact that they have not been widely ratified.

Hence there is an urgent need to address the following problems:

- the fact that an act must be regarded as a criminal offence both in the State requesting judicial assistance and in the State requested for such assistance;
- the fact that sending letters rogatory is such a time-consuming procedure;
- linguistic and procedural obstacles to communication between investigating authorities.

The Council has, however, decided to take certain joint actions which should help to alleviate problems in the last two areas in particular.

## **The most important instruments currently available to the European Union**

1. The joint action adopted by the Council on 22 April 1996 concerning a framework for the exchange of liaison magistrates to improve judicial cooperation between the Member States of the European Union

The purpose of this action was to make judicial cooperation swifter and more effective. To that end, liaison magistrates were supposed to exchange information concerning the Member States' respective legal and judicial systems and facilitate contacts between the relevant authorities.

2. The joint action adopted by the Council on 29 June 1998 on good practice in mutual legal assistance in criminal matters

This introduced practical arrangements to improve action to combat particularly serious forms of crime. Each Member State deposited with the Council a statement of good practice in relation to handling letters rogatory from other Member States. Not only did the Member States undertake to regularly check that their procedures complied with their statement of good practice, but the European Judicial Network was also empowered to make recommendations as to how individual Member States' practice could be improved.

The joint action adopted by the Council on 29 June 1998 concerning the creation of a European Judicial Network

The role of the European Judicial Network in combating serious crime is to establish direct contacts between the Member States' judicial authorities and the authorities responsible for judicial cooperation. The main 'contact points' in the network are the central authorities which have general or special responsibilities in relation to international cooperation in criminal matters. Liaison magistrates may also belong to the European Judicial Network.

Their task is to establish and, if necessary, coordinate direct contacts between local judicial authorities and other competent authorities in their own country and those in other Member States. They provide the necessary legal and practical information to ensure that requests requiring judicial cooperation are handled efficiently.

The EJM meets as the need arises, but on a regular basis and at the invitation of the presidency, in Brussels or in a Member State. The purpose of such meetings is to allow the contact points to get to know each other and exchange experience. In addition, the Council Secretariat ensures all contact points have permanent and unlimited access to information concerning:

- their partners within the network,
- the judicial authorities, including those at local level,
- the Member States' legal and procedural systems,
- the relevant legal instruments, including the text of declarations and reservations. The EJM may be linked by a telecommunications system.

The decision provides that, three years after the setting-up of the EJM, the Council should review its position and role *vis-à-vis* Europol.

Unfortunately, the European Parliament has never been informed about the development and operation of the three joint actions, which makes it very difficult to carry out an accurate assessment of the current situation.

However, Eurojust must be so constituted that it represents a qualitative improvement compared to these existing measures. The kind of improvements required have been indicated by the European Parliament in two own-initiative reports.

### **The European Parliament's own-initiative report on judicial cooperation in the European Union of 13 March 1998**

The Bontempi report emphasised the fundamental importance of judicial cooperation in criminal matters, above all as an expression of a shared legal culture. The report spells out the European Parliament's view that it is inconceivable to establish an area of freedom, security and law without a common European legal area, the hallmark of which is respect for the Member States' constitutional principles and human rights.

The report criticised the 'policy of conventions' and suggested that, instead, new solutions to the problem of bringing the Member States' criminal law into alignment, at least as regards organised crime, should be sought on the basis of the various instruments to protect the European Union's financial interests.

The European Parliament has long been aware, in connection with the handing-over of powers to Europol, of the problem of upholding the rule of law. Unfortunately, the Council has never taken up the proposals put forward with a view to addressing this problem.

The European Parliament has, however, gone even further and put forward proposals that seek to establish uniform criminal procedures.

### **The own-initiative report on criminal procedures in the European Union (Corpus Juris) of 13 April 1999**

The own-initiative Wiebenga report criticised, against the background of the surge in organised crime, the Council's inability to bring legal procedures in the European Union into alignment.

The report called for a European criminal justice system that would be capable of further development and for priority to be given to harmonising provisions relating to the following offences, which were specifically mentioned in the second paragraph of Article 29 of the Treaty establishing the European Union:

- offences against children
- trafficking in persons
- drug trafficking
- terrorism
- corruption and fraud
- money laundering.

In addition, offences against the environment and Internet crime should also be brought within the scope of the European criminal justice system.

The main points of the report were a programme for the creation of the necessary framework legislation and the creation of an independent European public prosecution service.

A European public prosecution service would be responsible for the centralised management of judicial information on current trans-frontier investigations relating to offences covered by

the European criminal justice system (see above). The aims were to avoid duplication of effort, promote cooperation and improve the coordination of criminal investigations.

At a later stage, the European public prosecution service should also be given the task of launching investigations through specially appointed delegated prosecutors and representing the prosecution *vis-à-vis* the competent authorities at national level in cases involving offences covered by the European criminal justice system.

The European Parliament also recommended that judicial control over Europol should be transferred to this European public prosecution service in order to remedy the absence of legal controls in that area.

### **A European public prosecution service to protect the financial interests of the European Union**

The European Parliament, therefore, agreed long before the Council that the common European legal area could only really take shape through the development of common laws and procedures. We are still very far from achieving either, however, as there seems to be very little appreciation in Council of the need for such measures.

Nevertheless, the prospect of introducing a European public prosecution service to protect the European Union's financial interests, which Parliament strongly supports, has come much closer as a result of the debate on corruption and fraud in the Community. The Commission has announced that it will submit a proposal to amend the Treaty to that end to the European Council to be held in Nice at the end of this year.

After a series of scandals, it is now evident that both the Council and the Commission have the political will to make progress in terms of protecting the European Union's financial interests. The argument currently concerns the powers to be conferred on Eurojust.

Account must be taken of the fact that Eurojust will not be able to coexist in the long term with a European public prosecution service responsible for protecting the financial interests of the EU. It should be accepted from the outset that both institutions will eventually be combined under the aegis of a European public prosecution service.

### **Legal basis**

The Council proposes Articles 31 and 34(2)(c) of the TEU as the legal basis for the setting-up of the provisional unit for judicial co-operation.

Given its proposed responsibilities, it would be reasonable also to cite Article 29 of the TEU. This article reflects the purpose of Eurojust, namely 'to provide citizens with a high level of safety within an area of freedom, security and justice'.

That article also provides for various forms of crime, organised or otherwise, to be combated by means of closer cooperation between police forces and judicial authorities, both directly and through Europol.



### **Tasks of the Provisional Judicial Co-operation Unit**

According to the conclusions adopted by the European Council in Tampere, Eurojust must, at the least, ensure better coordination between prosecution authorities and support criminal investigations in cases involving organised crime.

Although the prosecution services operate in accordance with their national legislation, it is still necessary to provide them with clear rules on data protection. Naturally, this also applies to the provisional judicial cooperation unit.

It should also be made perfectly clear that this unit is a vehicle for judicial rather than police cooperation. The only police officers it should comprise will represent Member States which do not have a public prosecution service as such, with the result that the relevant duties are carried out by the police.

In view of the proposed unit's remit, there must also be close and clearly regulated co-operation with Europol and the European Judicial Network, in order to avoid duplication of effort and conflicts over the respective responsibilities of those involved.

Finally, care must be taken to ensure that the provisional unit is able to keep a record of its experiences in the areas to be covered by Eurojust. Otherwise, it could be of no assistance to the Council, Parliament and the Commission when it comes to setting up Eurojust.

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

(Rule 63(2) of the Rules of Procedure)

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

on the initiative of the Portuguese Republic, the French Republic, the Kingdom of Sweden and the Kingdom of Belgium with a view to adopting a Decision setting up a Provisional Judicial Cooperation Unit  
(10356/2000 - C5-0395/2000 - 2000/0816(CNS)) (report by Evelyne Gebhardt)

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

---

Bruxelles, 18 October 2000

Dear Mr Watson,

The Committee on Legal Affairs and the Internal Market considered the above subject at its meeting of 17 October 2000.

At that meeting it adopted the following conclusions:

### *Article 1*

1. Each Member State shall assign to its Permanent Representation to the European Union a prosecutor, magistrate, or police officer of equivalent competence, to perform the liaison duties necessary to accomplish the aims and tasks referred to in paragraph 2. The fifteen members thus appointed shall meet in Brussels, supported by the infrastructures of the Council, in a formation known as the "Provisional Judicial Cooperation Unit".
2. In close cooperation with the General Secretariat of the Council and the European Judicial Network, those persons shall:
  - (a) within the scope of each Member State's national legislation, help to ensure proper coordination between the competent national authorities with regard to investigations and prosecutions involving two or more Member States and requiring coordinated action;
  - (b) facilitate judicial cooperation in criminal matters between the competent authorities of the Member States;
  - (c) assist Member States and the Council, as necessary, with a view to the negotiation and adoption by the Council of the act establishing Eurojust.

## Article 2

This Decision shall take effect on the day of its adoption.  
It shall cease to apply on the date on which the instrument establishing Eurojust takes effect.

Done at ...

The initiative indicates Articles 31 and 34(2)c) of the Treaty on European Union as its legal basis. An amendment tabled in your committee aims at adding Article 29 of the EU Treaty to the afore-mentioned articles.

It should be noted that Article 29 taken by itself is not a legal basis. It only makes reference to, *inter alia*, Article 31 (a) to (d).

The Legal Affairs Committee therefore unanimously concluded that the legal basis indicated by the initiative is well founded and reasonable and that Article 29 of the EU Treaty should not be added as a further legal basis.<sup>1</sup>

As a matter of principle, and in order to avoid requests of this kind in the future, the Legal Affairs Committee also decided that Article 29 of the EU Treaty should never be considered as a legal basis.

Signed by

Ana PALACIO VALLELERSUNDI

---

<sup>1</sup> Beysen (acting chairman), Rothley (1<sup>st</sup> vice-chairman), Wallis (rapporteur), Berenguer Fuster, Berger, Uca, Hautala, MacCormick, Koukiadis, Thors, Paciotti, Doorn, Garaud, Zappalà, Medina Ortega, Lehne, Fourtou, Zacharakis, H.P. Mayer, Lechner, Bradbourn, Pacheco Pereira.