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REPORT

on the Initiative of the Kingdom of Belgium, the French Republic, the Kingdom of Spain and the United Kingdom for the adoption by the Council of a draft Framework Decision on joint investigation teams (12442/01 - C5-0507/2001 – 2001/0821 (CNS))

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

Rapporteur: Timothy Kirkhope

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 15 October 2001 the Council consulted Parliament, pursuant to Article 39(1) of the EU Treaty, on the Initiative of the Kingdom of Belgium, the French Republic, the Kingdom of Spain and the United Kingdom for the adoption by the Council of a draft Framework Decision on joint investigation teams (12442/01 – 2001/0821 (CNS)).

At the sitting of 22 October 2001 the President of Parliament announced that she had referred the proposal to the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs as the committee responsible (C5-0507/2001).

The Committee on Citizens' Freedoms and Rights, Justice and Home Affairs had appointed Timothy Kirkhope rapporteur at its meeting of 10 October 2001.

It considered the Initiative and the draft report at its meetings of 16 October 2001 and 22 October 2001.

At the latter meeting it adopted the draft legislative resolution by 31 votes to 2, with 1 abstention.

The following were present for the vote: Graham R. Watson chairman; Robert J.E. Evans and Bernd Posselt, vice-chairmen; Timothy Kirkhope, rapporteur; Alima Boumediene-Thiery, Marco Cappato, Michael Cashman, Charlotte Cederschiöld, Carmen Cerdeira Morterero (for Ozan Ceyhun), Thierry Cornillet, Gérard M.J. Deprez, Giuseppe Di Lello Finuoli, Francesco Fiori (for Marcello Dell'Utri pursuant to Rule 153 (2)), Pernille Frahm, Evelyne Gebhardt (for Gerhard Schmid), Daniel J. Hannan, Jorge Salvador Hernández Mollar, Anna Karamanou, Margot Keßler, Eva Klant, Lucio Manisco (for Fodé Sylla), Juan Andrés Naranjo Escobar (for Hubert Pirker), Arie M. Oostlander (for Hartmut Nassauer), Elena Ornella Paciotti, Paolo Pastorelli, Martine Roure (for Adeline Hazan), Agnes Schierhuber (for Carlos Coelho pursuant to Rule 153(2)), Patsy Sörensen, Anna Terrón i Cusí, Astrid Thors (for Bertel Haarder pursuant to Rule 153(2)), Maurizio Turco (for Frank Vanhecke), Anne E.M. Van Lancker (for Joke Swiebel), Gianni Vattimo, Christian Ulrik von Boetticher.

The report was tabled on 23 October 2001.

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

LEGISLATIVE PROPOSAL

Initiative of the Kingdom of Belgium, the French Republic, the Kingdom of Spain and the United Kingdom for the adoption by the Council of a draft Framework Decision on joint investigation teams (12442/01 - C5-0507/2001 – 2001/0821 (CNS))

The proposal is amended as follows:

Text of the proposed Initiative ¹	Amendments by Parliament
Amendment 1 Recital 1	
<p>One of the Union's objectives is to provide citizens with a high level of safety within an area of freedom, security and justice and this objective is to be achieved by preventing and combating crime through closer cooperation between police forces, customs authorities and other competent authorities in the Member States.</p>	<p>One of the Union's objectives is to provide citizens with a high level of safety within an area of freedom, security and justice and this objective is to be achieved by preventing and combating crime through closer cooperation between police forces, customs authorities and other competent authorities in the Member States <i>while respecting the principles of human rights and fundamental freedoms and the rule of law on which the Union is founded and which are common to the Member States.</i></p>
<i>Justification</i>	
<i>The principles of human rights and the rule of law in Article 6 of the EU Treaty should be recalled as these principles apply in the Member States and will apply to the activities of the joint investigation teams. The Convention on Mutual Assistance in Criminal Matters itself recalls the European Convention on Human Rights in its recitals.</i>	
Amendment 2 Recital 2	
<p>The European Council held in Tampere on 15 and 16 October 1999 called for joint investigation teams as foreseen in the Treaty to be set up without delay, as a first</p>	<p>The European Council held in Tampere on 15 and 16 October 1999 called for joint investigation teams as foreseen in the Treaty to be set up without delay, as a first</p>

¹ Not yet published in OJ.

step, to combat trafficking in drugs and human beings as well as terrorism.

step, to combat, *in particular*, trafficking in drugs and human beings as well as terrorism *and organised crime*.

Justification

Trafficking in drugs and human beings and terrorism, with the addition of organised crime (Article 31(e) TEU) should be the main areas for which the joint investigation teams are created.

Amendment 3 Article 1, paragraph 1

By mutual agreement, the competent authorities of two or more Member States may set up a joint investigation team for a specific purpose and a limited period, which may be extended by mutual consent, to carry out criminal investigations in one or more of the Member States setting up the team. The composition of the team shall be set out in the agreement.

By mutual agreement, the competent authorities of two or more Member States may set up a joint investigation team for a specific purpose and a limited period, which may be extended by mutual consent, to carry out criminal investigations *as defined in Article 3 of the EU Convention on Mutual Assistance in Criminal Matters of 29 May 2000* in one or more of the Member States setting up the team. The composition of the team shall be set out in the agreement.

Justification

It is implied that the scope of the Framework Decision corresponds to that in the Convention on Mutual Assistance in Criminal Matters which has a general definition of criminal investigations which can be subject to mutual assistance. However, it should be specifically stated. The scope should not however be restricted to trafficking in drugs and human beings, terrorism.

Amendment 4
Article 4, paragraph 3 (new)

3. The Council shall inform the Parliament of the use which has been made by the Member States of joint investigation teams and its evaluation of their effectiveness, in particular, in the context of the annual debate held by the Parliament pursuant to Article 39 of the Treaty on European Union.

Justification

The Parliament should be kept informed in general terms on an annual basis within the framework of the annual debate on an area of freedom, security and justice, pursuant to Article 39(3) of the Treaty on European Union. More detailed information could be provided to the Parliament under the arrangements for the transmission of confidential information through for example a "Select Committee".

DRAFT LEGISLATIVE RESOLUTION

European Parliament legislative resolution on the Initiative of the Kingdom of Belgium, the French Republic, the Kingdom of Spain and the United Kingdom for the adoption by the Council of a draft Framework Decision on joint investigation teams (12442/01 - C5-0507/2001 – 2001/0821 (CNS))

(Consultation procedure)

The European Parliament,

- having regard to the Initiative of the Kingdom of Belgium, the French Republic, the Kingdom of Spain and the United Kingdom for the adoption by the Council of a draft Framework Decision on joint investigation teams (12442/01¹),
 - having regard to Article 34(2)(b) of the EU Treaty,
 - having been consulted by the Council pursuant to Article 39(1) of the EU Treaty (C5-0507/2001),
 - 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 (A5-0369/2001),
1. Approves the Initiative as amended;
 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 if the Council intends to amend the Initiative substantially;
 4. Instructs its President to forward its position to the Council and Commission.

¹ Not yet published in OJ.

EXPLANATORY STATEMENT

The rapporteur strongly welcomes this proposal for a Framework Decision to implement Article 13 of the EU Convention on Mutual Assistance in Criminal Matters (the Convention) which provides for the establishment and operation of joint investigation teams. This Framework Decision reproduces Article 13 of the Convention in its entirety and includes Articles 15 and 16 of the Convention regarding the liability of officials involved in the joint investigation teams.

The Convention was signed on 29 May 2000, however, one year later it has still not been ratified by the Member States and it therefore seems that the entry into force of the Convention may take some time. In the meantime, the need for a legal framework for the establishment of joint investigation teams has been brought sharply into focus by the events of 11 September 2001. It therefore seems appropriate to implement this part of the Convention within a much shorter time-frame through the adoption of this Framework Decision which thereby establishing the legal framework for the creation of joint investigations between the Member States. The Framework Decision requires Member States to adopt the necessary implementation measures by 1 July 2002.

Under the Convention and the proposed Framework Decision, two or more Member States involved in the establishment of a joint investigation team will agree on the purpose, period and composition of the team. Therefore, it is not necessary to specify in the proposed Framework Decision which authorities of the Member States may or may not participate in the joint investigation teams as it is necessary that the instrument is flexible. Any concerns regarding the participation of certain national authorities, for example, a national criminal intelligence service, can be negotiated at the time.

The rapporteur therefore agrees with the substantive provisions in the Framework Decision and recommends very few amendments.

With regard to the scope of the crimes for which the joint investigation teams can be established, the rapporteur considers that the scope should correspond to the Convention. This is implied in the proposed Framework Decision but this should be stated explicitly. However, the joint investigation teams should be established primarily for the purposes of tackling the crimes identified in Article 31(e) of the Treaty on European Union, that is, organised crime, terrorism and illicit drug trafficking and in addition trafficking of human beings. The rapporteur considers that the scope should not be defined restrictively as it could create legal uncertainty where for example joint investigation teams may be required in relation to fraud, money laundering, arms trafficking.

As expressed in the recitals of the Convention, it is recognised that all the Member States apply the human rights principles of the European Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 and therefore have in their legal systems *inter alia* provisions which guarantee the right to a fair trial and the protection of privacy. Therefore, no additional concerns should arise with regard to the human rights of individuals due to the multi-national nature of the investigations. However, the rapporteur recommends that the

need for respect of human rights is emphasised in the recitals.

Furthermore, the rapporteur considers that the operation of joint investigation teams by the Member States should be subject to parliamentary control by the European Parliament and therefore recommends that, in the context of the annual debate on an area of freedom, security and justice, the Council should be requested to inform the Parliament of the operation of joint investigation teams and their effectiveness. In a general debate, the Council is unlikely to be able to provide much information. However, if a "Select Committee" is established for the provision of confidential information to the Parliament, more detailed information could be provided under such arrangements.