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**A5-0429/2002**

4 December 2002

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## **REPORT**

on the initiative by the Kingdom of Denmark with a view to adopting a Council Decision on the investigation and prosecution of inter alia war crimes and crimes against humanity  
(11098/2002 – C5-0418/2002 – 2002/0819(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 11 September 2002 the Council consulted Parliament, pursuant to Article 39(1) of the EU Treaty, on the initiative by the Kingdom of Denmark with a view to adopting a Council Decision on the investigation and prosecution of inter alia war crimes and crimes against humanity (11098/2002 – 2002/0819(CNS)).

At the sitting of 23 September 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 (C5-0418/2002).

The Committee on Citizens' Freedoms and Rights, Justice and Home Affairs appointed Timothy Kirkhope rapporteur at its meeting of 2 October 2002.

The committee considered the initiative by the Kingdom of Denmark and the draft report at its meetings of 5 November 2002 and 3 December 2002.

At the latter meeting it adopted the draft legislative resolution by 31 votes to 4, with 0 abstentions.

The following were present for the vote: Jorge Salvador Hernández Mollar, chairman; Robert J.E. Evans and Lousewies van der Laan, vice-chairmen; Timothy Kirkhope, rapporteur; Generoso Andria (for Mary Elizabeth Banotti, pursuant to Rule 153(2)), Mario Borghezio, Alima Boumediene-Thiery, Giuseppe Brienza, Kathalijne Maria Buitenweg (for Heide Rühle), Marco Cappato (for Johan Van Hecke), Michael Cashman, Chantal Cauquil (for Giuseppe Di Lello Finuoli, pursuant to Rule 153(2)), Charlotte Cederschiöld, Ozan Ceyhun, Carlos Coelho, Thierry Cornillet, Marianne Eriksson (for Ilka Schröder, pursuant to Rule 153(2)), Evelyne Gebhardt (for Adeline Hazan), Pierre Jonckheer, Anna Karamanou (for Margot Keßler), Ole Krarup, Alain Krivine (for Fodé Sylla), Giorgio Lisi (for Christian Ulrik von Boetticher, pursuant to Rule 153(2)), Manuel Medina Ortega (for Martin Schulz), Pasqualina Napolitano (for Carmen Cerdeira Morterero, pursuant to Rule 153(2)), Hartmut Nassauer, Bill Newton Dunn, Marcelino Oreja Arburúa, Hubert Pirker, José Ribeiro e Castro, Olle Schmidt (for Baroness Sarah Ludford), Ole Sørensen (for Francesco Rutelli), Patsy Sørensen, Sérgio Sousa Pinto, Joke Swiebel, Anna Terrón i Cusí, Maurizio Turco and Sabine Zissener (for The Lord Bethell, pursuant to Rule 153(2))

The report was tabled on 4 December 2002.

## DRAFT LEGISLATIVE RESOLUTION

**European Parliament legislative resolution on the initiative by the Kingdom of Denmark with a view to adopting a Council Decision on the investigation and prosecution of inter alia war crimes and crimes against humanity (11098/2002 – C5-0418/2002 – 2002/0819(CNS))**

### **(Consultation procedure)**

*The European Parliament,*

- having regard to the initiative by the Kingdom of Denmark (11098/2002<sup>1</sup>),
  - having regard to Articles 30, 31 and 34(2)(c) of the EU Treaty,
  - having been consulted by the Council pursuant to Article 39(1) of the EU Treaty (C5-0418/2002),
  - 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 (A5-0429/2002),
1. Approves the initiative by the Kingdom of Denmark as amended;
  2. Calls on the Council to alter the text accordingly, pursuant to Article 250(2) of the EC Treaty;
  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 Kingdom of Denmark substantially;
  5. Instructs its President to forward its position to the Council and Commission, and the government of the Kingdom of Denmark.

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<sup>1</sup> OJ C 223 E 19.9.2002, p. 19.

Amendment 1  
Recital 4

(4) The Rome Statute emphasises that the International Criminal Court established under it is to be complementary to national criminal jurisdictions.

(4) The Rome Statute emphasises that the International Criminal Court established under it is to be complementary to national criminal jurisdictions. ***Effective investigation and, as appropriate, prosecution of genocide, crimes against humanity and war crimes must be ensured without interference with the jurisdiction of the International Criminal Court.***

*Justification*

*It should be expressly stated that the intention is not to interfere with the jurisdiction of the International Criminal Court.*

Amendment 2  
Recital 7

(7) The successful outcome of effective investigation and prosecution of such crimes ***at national level*** depends to a high degree on close cooperation between the relevant national law enforcement and immigration authorities.

(7) The successful outcome of effective investigation and prosecution of such crimes ***by the national law enforcement authorities*** depends to a high degree on close cooperation between the relevant national law enforcement and immigration authorities ***and non-governmental organisations which, as bodies to which victims turn for refuge, have information on the perpetrators.***

*Justification*

*It should be expressly stated that it will be the law enforcement authorities, and not the immigration authorities, which will conduct the prosecution of such crimes. NGOs in various Member States have taken on the problems of war crime victims. In the course of this work, they find out important information about the perpetrators. It would be useful if the law*

*enforcement authorities supported the NGOs in this work and included the information gathered in the prosecution proceedings.*

Amendment 3  
Recital 10

(10) On 13 June 2002, the Council adopted a Decision setting up a European network of contact points in respect of persons responsible for genocide, crimes against humanity and war crimes.

(10) On 13 June 2002, the Council adopted a Decision setting up a European network of contact points in respect of persons responsible for genocide, crimes against humanity and war crimes. ***Member States should ensure that full use is made of the contact points to facilitate cooperation between the competent national authorities.***

*Justification*

*This decision should also seek to ensure the full use of the network of contact points as that decision has recently been adopted.*

Amendment 4  
Recital 11 a (new)

***(11 a) Since the three institutions of the EU have politically subscribed to the values enshrined in the EU Charter and all the Member States have ratified the Council of Europe Convention of 28 January 1981 for the protection of individuals with regard to automatic processing of personal data, the personal data processed in the implementation of this Decision should enjoy protection in accordance with the principles set out in those declarations of rights***

### *Justification*

*Any exchange of information under this Decision should be in accordance with the rules for the protection of personal data as set out in the EU's Charter of Fundamental Rights and the 1981 Council of Europe Convention.*

#### Amendment 5 Article 1

The aim of this Decision is to ***strengthen the possibilities afforded to Member States for investigating and prosecuting*** persons who have committed or participated in the commission of war crimes ***or similar serious offences, including terrorism.***

The aim of this Decision is to ***increase co-operation between national units in order to maximise the ability of law enforcement authorities in different Member States to co-operate effectively in the field of investigation and prosecution of*** persons who have committed or participated in the commission of ***genocide, crimes against humanity or war crimes, as defined in Article 6, 7 and 8 of the Rome Statute of the International Criminal Court of 17 July 1998.***

### *Justification*

*This is a measure on war crimes and is intended to be complementary to the ICC, therefore it is not appropriate to include terrorism in this measure. The same reference to the Rome statute is included in the recent decision establishing a network of contact points.*

#### Amendment 6 Article 3, paragraph 1

1. Insofar as a person who has applied for a residence permit is ***suspected*** of planning, committing or participating in the commission of war crimes or similar serious crimes, the Member States must ensure, in accordance with national law, that the relevant acts are investigated, and, where justified, prosecuted.

1. Insofar as a person who has applied for a residence permit is ***under reasonable suspicion*** of planning, committing or participating in the commission of war crimes or similar serious crimes, the Member States must ensure, in accordance with national law, that the relevant acts are investigated, and, where justified, prosecuted ***by the national law enforcement***



*authorities.*

*Justification*

*It is important that there is a reasonable amount of evidence to ensure that powers are not to be abused.*

Amendment 7  
Article 3, paragraph 3

3. Where, in connection with the processing of an application for a residence permit, the immigration authorities become aware of facts which give rise to a suspicion that the applicant has participated in acts as described in Article 1, and where it emerges that the applicant has previously sought permission to reside in another Member State, the law enforcement authorities may apply to the competent law enforcement authorities in the latter Member State with a view to obtaining relevant information, including information from the immigration authorities. The exchange of information pursuant to this provision shall take place in accordance with relevant international agreements and national law.

3. Where, in connection with the processing of an application for a residence permit, the immigration authorities become aware of facts which give rise to a suspicion that the applicant has participated in acts as described in Article 1, and where it emerges that the applicant has previously sought permission to reside in another Member State, the law enforcement authorities may apply to the competent law enforcement authorities in the latter Member State with a view to obtaining relevant information, including information from the immigration authorities. The exchange of information pursuant to this provision shall take place in accordance with relevant international agreements ***such as the Council of Europe Convention of 28 January 1981 for the protection of individuals with regard to automatic processing of personal data*** and national law, ***whichever provides the greatest protection of personal data.***

*Justification*

*Any exchange of information under this Decision should be subject to satisfactory rules for the protection of personal data.*

Amendment 8  
Article 3, paragraph 4

4. Insofar as the law enforcement authorities in a Member State become aware that a person **suspected** of acts as referred to in Article 1 is in another Member State, they shall inform the competent authorities in the latter Member State of their suspicions and the basis thereof. Such information shall be provided in accordance with relevant international agreements and national law.

4. Insofar as the law enforcement authorities in a Member State become aware that a person **under reasonable suspicion of committing** acts as referred to in Article 1, is in another Member State, they shall inform the competent authorities in the latter Member State of their suspicions and the basis thereof. Such information shall be provided in accordance with relevant international agreements **such as the Council of Europe Convention of 28 January 1981 for the protection of individuals with regard to automatic processing of personal data** and national law, **whichever provides the greatest protection of personal data.**

*Justification*

*It is important that there is a reasonable amount of evidence to ensure that powers are not to be abused.*

*Any exchange of information under this Decision should be subject to satisfactory rules for the protection of personal data.*

Amendment 9  
Article 4, paragraph 1 a (new)

***1a. Member States shall take the necessary measures to use the work of non-governmental organisations for the prosecution and to support the work of those organisations.***

*Justification*

*See the justification for Amendment 2.*

Amendment 10  
Article 5, paragraph 1

1. Member States shall coordinate ongoing efforts. Member States shall ***exploit as fully as possible*** cooperation within the European Judicial Network in accordance with Joint Action 98/428/JHA.

1. Member States shall coordinate ongoing efforts. Member States shall ***ensure full*** cooperation within the European Judicial Network in accordance with Joint Action 98/428/JHA.

*Justification*

*The term 'exploit' carries negative connotations; this amendment simplifies and negates these connotations*

Amendment 11  
Article 5, paragraph 2

***2. Member States shall appoint national coordinators for the investigation of war crimes.*** At the Presidency's initiative, ***the national coordinators*** shall meet at regular intervals ***in conjunction with meetings within the European Judicial Network*** with a view to exchanging information about experiences, practices and methods. Depending on the circumstances, representatives from the International Criminal Tribunals for the former Yugoslavia and for Rwanda and the International Criminal Court ***shall*** also be invited to take part in such meetings.

2. At the Presidency's initiative, ***the contact points designated under Article 1 of the Council Decision setting up a European network of contact points in respect of persons responsible for genocide, crimes against humanity and war crimes,*** shall meet at regular intervals with a view to exchanging information about experiences, practices and methods. Depending on the circumstances, representatives from the International Criminal Tribunals for the former Yugoslavia and for Rwanda, the International Criminal Court and other international bodies ***may*** also be invited to take part in such meetings.

*Justification*

*It is not necessary to appoint national coordinators as a network of contact points already exists.*

Amendment 12  
Article 5 a (new)

***Any kind of information exchange or other kind of processing of personal data under this Decision shall take place with full respect for the requirements flowing from the applicable international and domestic data protection legislation.***

*Justification*

*A new article should be included on the requirement to respect the rules on the protection of personal data.*

Amendment 13  
Article 5 b (new)

***The Council will inform the European Parliament of the functioning and effectiveness of this Decision in the context of the annual debate held by the European Parliament pursuant to Article 39 of the Treaty.***

*Justification*

*The Parliament should be informed of the functioning of this Decision.*

## EXPLANATORY STATEMENT

The rapporteur welcomes this initiative from Denmark which seeks to promote closer cooperation on the investigation and prosecution of inter alia war crimes and crimes against humanity. He considers, however, that it is an instrument for cooperation on war crimes and that therefore it is not appropriate to include terrorism in this proposal. Greater cooperation is also needed on the prosecution of terrorist offences, but that should be the subject of a different decision.

This proposed decision also refers very briefly to the network of contact points for war crimes on which a decision has recently been adopted (see the Report of the rapporteur on the proposed decision establishing a network of contact points) and requires the creation of national co-ordinators for the investigation of war crimes. Depending on the organisation within the Member State, these co-ordinators could be the same as the contact points and care should be taken not to create too many new bodies.

The rapporteur is aware of the criticism which has been made of this proposal, but considers that persons who have participated in war crimes should be prosecuted and that greater cooperation is needed between the relevant authorities and also between the Member States to successfully achieve such prosecutions.

However, the rapporteur considers that certain safeguards should be included in the Council Decision, in particular, concerning the respect for data protection rules.

The rapporteur has therefore proposed the following amendments :

- deletion of the inclusion of terrorism in the crimes in Article 1;
- clarification that this Council Decision is not intended to interfere with the jurisdiction of the International Criminal Court;
- greater emphasis on the use of the network of contact points for war crimes, which should replace the "national co-ordinators" referred to in the original Danish initiative;
- references should be included regarding the respect of the rules on the protection of personal data;
- as concerns have been expressed about the role of the immigration authorities it should be expressly stated that the prosecution of such crimes would be carried out by the national law enforcement authorities, and not by the immigration authorities;
- information should be provided to the Parliament on the use and effectiveness of this Decision in the context of the Annual debate on police and judicial cooperation in criminal matters.