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## **REPORT**

on the proposal for a Council decision on the exchange of information and cooperation concerning terrorist offences  
(15599/2004 – C6-0007/2004 – 2004/0069(CNS))

Committee on Civil Liberties, Justice and Home Affairs

Rapporteur: Antoine Duquesne

### ***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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## DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

**on the proposal for a Council decision on the exchange of information and cooperation concerning terrorist offences  
(15599/2004 – C6-0007/2004 – 2004/0069(CNS))**

**(Consultation procedure)**

*The European Parliament,*

- having regard to the Council text (15599/2004),
  - having regard to the Commission proposal to the Council (COM(2004)0221)<sup>1</sup>,
  - having regard to Article 34(2)(c) of the Treaty on European Union,
  - having regard to Article 39(1) of the Treaty on European Union, pursuant to which the Council consulted Parliament (C6-0097/2004),
  - having regard to Rules 93 and 51 of its Rules of Procedure,
  - having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs and the opinions of the Committee on Foreign Affairs and the Committee on Legal Affairs (A6-0160/2005),
1. Approves the Council text as amended;
  2. Calls on the Commission to alter its proposal accordingly, pursuant to Article 250(2) of the EC Treaty;
  3. Calls on the Council to notify Parliament if it intends to depart from the text approved by Parliament;
  4. Asks the Council to consult Parliament again if it intends to amend substantially the text submitted for consultation;
  5. Instructs its President to forward its position to the Council and Commission.

Text proposed by the Council

Amendments by Parliament

Amendment 1  
Recital 3 a (new)

***(3a) It is necessary to establish a high degree of confidence between law***

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<sup>1</sup> Not yet published in OJ.

*enforcement authorities of the Member States and with Europol and Eurojust, a lack of which has so far hindered an efficient exchange of information and intelligence. These measures should include:*

- establishing common standards for data protection in the third pillar under the authority of an independent joint supervisory body;*
- providing police forces with a handbook of good practices that sets out in a simple and practical manner their data protection responsibilities and duties;*
- establishing minimum standards for criminal and procedural law;*
- giving the Court of Justice general jurisdiction in the third pillar;*
- ensuring full parliamentary scrutiny.*

Amendment 2  
Recital 5

(5) The objectives of the proposed action cannot be satisfactorily attained by the Member States acting alone and can therefore, given the need for reciprocity, be better attained by the Union, which may accordingly act in accordance with the subsidiarity principle. In accordance with the principle of proportionality, this Framework Decision does not go beyond what is necessary to attain those objectives.

(5) The objectives of the proposed action cannot be satisfactorily attained by the Member States acting alone and can therefore, given the need for reciprocity, be better attained by ***closer cooperation between Member States and*** by the Union, which may accordingly act in accordance with the subsidiarity principle. In accordance with the principle of proportionality, this Framework Decision does not go beyond what is necessary to attain those objectives.

*Justification*

*70% of the information exchanged through Europol is exchanged on a bilateral basis and this amendment recognises this reality.*

Amendment 3  
Recital 5 a (new)

***(5a) This Decision applies mutatis mutandis the same level of data protection as provided for under the first pillar by Directive 95/46/EC and sets up a joint personal data protection supervisory authority under the third pillar which should carry out its tasks completely independently and which, taking that specific role into account, should advise the European institutions and contribute, in particular, to the uniform application of the national rules adopted pursuant to this Decision.***

Amendment 4  
Recital 5 b (new)

***(5b) Member States are determined to take further steps towards the rapid ratification of all international conventions and protocols relevant to the fight against terrorism, including the protocols amending the Europol Convention, and are committed to further promote the process of universal ratification by third countries of the relevant international instruments related to the fight against terrorism and the provision by those countries of aid and technical assistance in their implementation.***

*Justification*

*The ratification of the protocols amending the Europol Convention is necessary for ensuring a wider Europol mandate and also possibility for the cooperation in the exchange of information with a third country, such as the US. The EU should promote the universal ratification of relevant international agreements by the candidate countries and third countries, which have difficulties in tackling terrorist activities and the provision of aid and technical assistance in their implementation.*

Amendment 5  
Article 1 a, heading (new)

**Article 1a**

***Exchange of information concerning  
terrorist offences between police services  
or other law enforcement authorities***

Amendment 6  
Article 1 a, paragraph 1 (new)

***1. Each Member State shall ensure that  
any relevant information held by its police  
services or other law enforcement  
authorities in connection with terrorist  
offences or which is accessible to them  
without the use of coercive means can be  
provided to the police services or other  
competent law enforcement authorities of  
other Member States in accordance with  
this Decision.***

Amendment 7  
Article 1 a, paragraph 2 (new)

***2. Each Member State shall ensure that  
conditions not stricter than those  
applicable at national level for providing  
and requesting information are applied  
for providing information to the police  
services or other competent law  
enforcement authorities of other Member  
States.***

Amendment 8  
Article 1 a, paragraph 3 (new)

***3. The information shall be provided on  
request by a police service or other  
competent law enforcement authority, in  
accordance with national law, within the  
framework of an investigation into  
terrorist offences.***



Amendment 9  
Article 2, heading

*Exchanges* of information concerning  
terrorist offences

*Provision* of information concerning  
terrorist offences *to Europol and Eurojust*

Amendment 10  
Article 2, paragraph 2

2. Each Member State shall designate one, or more than one authority where its legal system so provides, Eurojust national correspondent for terrorism matters or an appropriate judicial or other competent authority which, in accordance with national law, shall have access to and can collect all relevant information concerning prosecutions and convictions for terrorist offences, and send it to Eurojust in accordance with *paragraph 4a*.

2. Each Member State shall designate one, or more than one authority where its legal system so provides, Eurojust national correspondent for terrorism matters or an appropriate judicial or other competent authority which, in accordance with national law, shall have access to and can collect all relevant information concerning prosecutions and convictions for terrorist offences, and send it to Eurojust in accordance with *paragraph 5*.

Amendment 11  
Article 2, paragraph 3

3. Each Member State shall take the necessary measures to ensure that at least the information referred to in paragraph 4 concerning criminal investigations and the information referred to in *paragraph 4a* concerning prosecutions and convictions for terrorist offences which affect or may affect two or more Member States, gathered by the relevant authority, is transmitted to:

3. Each Member State shall take the necessary measures to ensure that at least the information referred to in paragraph 4 concerning criminal investigations and the information referred to in *paragraph 5* concerning prosecutions and convictions for terrorist offences which affect or may affect two or more Member States, gathered by the relevant authority, is transmitted to:

Amendment 12  
Article 2, paragraph 4, point (d) a (new)

*(da) information about convictions for terrorist offences and the specific circumstances surrounding these offences; if convictions at first instance*

***are overturned on appeal, the requested Member State shall notify the requesting Member State of the modified information without delay;***

*Justification*

*A conviction becomes final only when the time limits for appeals laid down by domestic law have expired. This period, which varies in accordance with the domestic legal system and the length of courts' case lists, may sometimes be quite protracted. Efficiency, which must be the prime consideration in fighting terrorism, requires it to be possible to provide information about terrorist convictions as soon as the initial judgment has been given, without waiting for all options of appeal to be exhausted, as too long a delay may render the information useless. The information is not, incidentally, confidential, as judgments given in criminal cases are in principle public (Article 6(1), European Convention on Human Rights and Fundamental Freedoms).*

Amendment 13

Article 2, paragraph 4, point (d) b (new)

***(db) the sentences handed down and relevant information about their execution;***

Amendment 14

Article 2, paragraph 4, point (d) c (new)

***(dc) disqualifications incurred as a result of the conviction;***

Amendment 15

Article 2, paragraph 4, point (d) d (new)

***(dd) previous criminal record;***

*Justification*

*It is vital that both Europol and Eurojust should also have access to information about sentences, their execution, disqualifications and the previous criminal records of people or groups who are under criminal investigation. The communication of this information, which, it should be stressed, must be organised as quickly as possible by establishing a European register of criminal convictions and disqualifications, is very important, both to assist the fight against terrorism and to fight all forms of serious crime, and is absolutely vital to the*

*proper functioning of national law enforcement authorities, Europol and Eurojust. It is for this reason that it is necessary, pending the inauguration of the European register of convictions, to explicitly include this information in the information which must be provided to Europol and Eurojust.*

Amendment 16

Article 2, paragraph 4 a, point (c)

(c) information about **final** convictions for terrorist offences and the specific circumstances surrounding these offences;

(c) information about convictions for terrorist offences and the specific circumstances surrounding these offences; ***if convictions at first instance are overturned on appeal, the requested Member State shall notify the requesting Member State of the modified information without delay;***

Amendment 17

Article 2, paragraph 4 a, point (c) a (new)

***(ca) the sentences handed down and relevant information about their execution;***

Amendment 18

Article 2, paragraph 4 a, point (c) b (new)

***(cb) disqualifications incurred as a result of the conviction;***

Amendment 19

Article 2, paragraph 4 a, point (c) c (new)

***(cc) previous criminal record;***

*Justification*

*It is vital that both Europol and Eurojust should also have access to information about sentences, their execution, disqualifications and the previous criminal records of people or groups who are under criminal investigation. The communication of this information, which,*

*it should be stressed, must be organised as quickly as possible by establishing a European register of criminal convictions and disqualifications, is very important, both to assist the fight against terrorism and to fight all forms of serious crime, and is absolutely vital to the proper functioning of national law enforcement authorities, Europol and Eurojust. It is for this reason that it is necessary, pending the inauguration of the European register of convictions, to explicitly include this information in the information which must be provided to Europol and Eurojust.*

Amendment 20  
Article 2 a (new)

***Article 2a***

***Review and deletion of information concerning terrorist offences***

***(1) Europol and Eurojust shall carry out a review every three years to determine whether the information provided pursuant to Article 2 is up to date.***

***(2) Europol and Eurojust shall delete information provided pursuant to Article 2 after three years, provided that the information in question does not relate to ongoing investigations.***

***(3) In exceptional cases, the time-limit laid down in paragraph 2 may be extended. Europol and Eurojust shall ensure that they have established an appropriate procedure to consider such exceptional cases.***

***Justification***

*Europol and Eurojust must be required to review regularly the databases available and to delete information which is no longer relevant to ongoing investigations. This is already the practice adhered to by Europol.*

Amendment 21  
Article 3 a (new)

***Article 3a***

***Competence of the Court of Justice***

***Each Member State shall accept the jurisdiction of the Court of Justice of the***

***European Communities to give preliminary rulings on the validity and interpretation of this Decision in accordance with Article 35(2) of the Treaty on European Union.***

Amendment 22  
Article 4

Each Member State shall take the necessary measures to ensure that ***requests from other Member States for mutual legal assistance and recognition and enforcement of judgements in connection with terrorist offences are dealt with as a matter of urgency and shall be given priority.***

Each Member State shall take the necessary measures to ensure that ***any relevant information contained in a document, set of papers, file, object or any other item of evidence which has been seized or confiscated during criminal investigations or criminal proceedings in connection with terrorist offences is made immediately accessible or immediately forwarded to the authorities of other Member States concerned, in accordance with national law and the relevant international legal instruments, if the information in question is regarded as essential to the opening of an investigation in those Member States or if investigations or prosecutions in connection with terrorist offences are in progress in those countries.***

Amendment 23  
Article 4, paragraph 1 a (new)

***If information cannot be provided immediately, the competent authority shall indicate immediately the timeframe within which it can be provided, which must not exceed 12 hours or, in the case of information which requires formalities or prior contacts with other authorities, 48 hours if the matter is urgent and otherwise 10 working days.***

Amendment 24  
Article 4, paragraph 1 b (new)

***The time limits laid down in paragraph 1a shall run from the time when the competent authority of the requested Member State receives the request for information.***

*Justification*

*The effectiveness of the proposal under consideration is vitally dependent on the periods within which the information requested is exchanged. When it comes to fighting serious crime, and more particularly combating terrorism, speed is of the essence: information which is provided too late often ceases to be of any use. Short but realistic deadlines must therefore be set. In this context it is worth distinguishing between information which is immediately available within the police services or other competent law enforcement authorities, for the provision of which a time limit of 12 hours seems sufficient, and information which cannot be obtained without completing administrative or other formalities or contacting other agencies or authorities in advance (e.g. information which needs to be extracted from criminal records), for which it seems appropriate to set a time limit of 48 hours in urgent cases and otherwise 10 working days.*

Amendment 25  
Article 4 a (new)

*Article 4 a*

***Spontaneous exchange of information***

***Without prejudice to the application of Articles 2 and 3, the police services or other competent law enforcement authorities shall, without being so requested, forward information to the police services or other competent law enforcement authorities of other Member States concerned if there are serious objective reasons to believe that the information in question could assist in the prevention, investigation or detection of crimes or criminal activities which are linked to a terrorist offence.***

***The provision of information pursuant to paragraph 1 shall be restricted to what is regarded as relevant or necessary for the successful prevention, investigation or***

*detection of the crime or criminal activity in question.*

*The police services or other competent law enforcement authorities in question shall be informed of the clearly substantiated serious objective reasons for initiating the spontaneous exchange of information pursuant to paragraph 1.*

Amendment 26  
Article 4 b (new)

*Article 4b*

*Withholding of information*

*The competent authorities may refuse to provide information only if they show that there are serious factual reasons to assume that:*

- (a) the provision of the information would harm essential national security interests of the requested Member State;*
- (b) the provision of the information might jeopardise the success of a current investigation;*
- (c) the requested information is clearly disproportionate or irrelevant with regard to the purposes for which it has been requested.*

Amendment 27  
Article 4 c (new)

*Article 4c*

*Principles governing the collection and processing of data*

*1. Information, including personal data, exchanged or communicated under the terms of the present decision must:*

- (a) be accurate, appropriate and relevant to the purposes for which it is collected and subsequently processed;*

*(b) be collected and processed for the exclusive purpose of carrying out legal tasks.*

*Data relating to aspects of private life, as well as data relating to individuals not under suspicion, may only be collected in cases of absolute necessity and subject to compliance with strict conditions.*

*2. The integrity and confidentiality of data provided under the terms of the present decision shall be guaranteed at all stages of their exchange and processing.*

*Information sources shall be protected.*

Amendment 28  
Article 4 d (new)

#### *Article 4d*

##### *Right of access to data of the person concerned*

*The person concerned by the data collected must:*

*(a) be informed of the existence of the data relating to them, except where there is a major obstacle to this;*

*(b) have a cost-free right of access to the data concerning them and the right to rectify inaccurate data, except where such access is likely to be prejudicial to security or public order or to the rights and freedoms of third parties, or to hamper inquiries that are under way;*

*(c) where there is misuse of the data under the terms of the present article, have a right to object cost-free with a view to redressing the legal situation and, where applicable, to obtaining compensation if the principles set out in this article have not been adhered to.*



**Article 4e**

**Joint personal data protection  
supervisory authority**

**1. A joint personal data protection supervisory authority shall be set up, hereinafter referred to as the 'authority'.**

**The authority shall be advisory in nature and independent.**

**2. The authority shall be made up of a representative of the supervisory authority or authorities designated by each Member State, a representative of the authority or authorities set up for the institutions, the European Data Protection Supervisor and the Community bodies and a representative of the Commission.**

**Each member of the authority shall be designated by the institution, authority or authorities s/he represents. Where a Member State has designated more than one supervisory authority, the latter shall appoint a joint representative. The same procedure shall apply for the authorities set up for the Community institutions and bodies.**

**3. The authority shall reach its decisions by a simple majority of the representatives of the supervisory authorities.**

**4. The authority shall elect its chairman. The chairman's term of office shall be two years. This term of office shall be renewable.**

**5. The authority shall be assisted by the Secretariat for the joint supervisory data-protection bodies set up by the Council Decision of 17 October 2000.**

*The Secretariat shall be transferred to the Commission as soon as possible.*

Amendment 30  
Article 4 f (new)

*Article 4d*

*Remit of the joint personal data protection supervisory authority*

*1. The remit of the authority shall be:*

*(a) to examine any matter relating to the implementation of the national provisions adopted in application of the present decision;*

*(b) to deliver to the Commission an opinion on the level of protection in the European Union;*

*(c) to advise on any proposed change to the present decision, any proposal for additional or specific measures to safeguard the rights and freedoms of natural persons with regard to the processing of personal data, and any other proposal for European legislation with implications for these rights and freedoms;*

*(d) to deliver an opinion on codes of conduct drawn up at European level.*

*2. If the authority ascertains the existence of disparities between the laws and practices of the Member States likely to prejudice the equivalence of protection of persons in respect of personal data processing in the European Union, it shall inform the Commission.*

*3. The authority may issue recommendations on its own initiative on any matter relating to protection of persons in respect of the processing of personal data under the third pillar.*

*4. The opinions and recommendations of the authority shall be forwarded to the Commission.*

*5. In connection with the performance of its tasks, the authority shall have a power of investigation and an effective power of intervention which enable it, where appropriate, to take any measure required to correct, to temporarily or definitively ban the processing of or to delete any item of information collected if the manner in which that item was collected constitutes a breach of Articles 9a and 9b.*

*6. Any person may submit to the authority a request concerning the protection of his/her rights and freedoms as regards the processing of personal data.*

*The person concerned shall be informed of the action taken on his/her request.*

*7. The Commission shall inform the authority of the action it has taken on its opinions and recommendations. With that aim in view, it shall draw up a report which shall also be forwarded to the European Parliament and to the Council. The report shall be published.*

*8. The authority shall draw up an annual report on the state of protection of natural persons as regards the processing of personal data under the third pillar and shall forward that report to the European Parliament, to the Council and to the Commission. The report shall be published.*

Amendment 31  
Article 5 a (new)

#### *Article 5a*

##### *Reports by Europol and Eurojust*

*Europol and Eurojust shall submit an annual report to the European Parliament and the Council.*

### *Justification*

*Taking into account the complexity of terrorist-linked offences, there is a necessity to create a closer linkage between Europol, Eurojust and the EU policy-making level. Reporting back to the Council and the European Parliament is a way to ensure more effective EU counter-terrorist policies as well as a parliamentary control of the bodies.*

## EXPLANATORY STATEMENT

### 1. Introduction

In the aftermath of the tragic events of 11 September 2001 in the United States, fighting terrorism has become one of the priorities of the European Union. Yet the bombings which cruelly afflicted the Kingdom of Spain on 11 March 2004 showed that the threat of acts of terrorism on European soil or against European interests is ever present.

The events in Spain regrettably showed that the approach which the European Union had pursued since 2001, which was basically an empirical one, had reached its limits. A change of approach is therefore urgently needed. The European Union must now be proactive and not merely react to developments. It must also adopt a more systematic approach and constantly ensure that the legislation it adopts is consistent. In particular, this means acting in accordance with a genuine and unwavering policy based on clear concepts.

This being so, three principles may be adduced which should guide the thinking and the actions of the Council and Commission.

Firstly, the resources and the capacity must be acquired to identify precisely each of the targets which are to be combated. Terrorism is not a monolithic phenomenon: different types exist. In order to combat them appropriately, it is necessary to distinguish among them and to know them.

Secondly, an effective response requires a modern and realistic approach to terrorism, i.e. an approach which takes account of the very close links which often exist among the various terrorist organisations, and also between terrorism and serious organised crime.

Thirdly, the objective of consistency makes it necessary to avoid duplicating legal instruments for combating terrorism but rather to make the existing rules more uniform and simpler.

The proliferation of provisions in this field is a source of confusion and inefficiency. It is known, for example, that the interconnection and multiplicity of the instruments available at European level make life very complicated for the police, who on the ground, exchange information.

In this context a systematic assessment of the policies which had been conducted and the results achieved would make it possible to ascertain both the shortcomings and the measures which have been effective.

An analysis of the work performed by Europol and Eurojust since their establishment is undoubtedly a good starting point for this. It is well known that their performance has not been entirely satisfactory so far. The European Council of 4 and 5 November 2004 clearly underlined the need for this analysis and expressed its hope that more use would be made of Eurojust and Europol, instructing the EU coordinator of measures against terrorism - whose exact role and powers ought, incidentally, in the view of the rapporteur, to be defined - to

promote all possible progress in this field and calling on Member States to cooperate fully with Europol and Eurojust.

Lastly, better involvement of those on the ground in defining the action strategy will certainly make it possible to calibrate more effectively the measures to be taken in future. It is essential to understand the needs of the police properly and to take account of their expectations in order to achieve satisfactory cooperation between police authorities, particularly through Europol. Experience shows that, all too often, if national police authorities fail to provide Europol with the information they should, it is because they do not appreciate what this could contribute to their work.

In view of this attitude, it is vital to devise specific and convincing responses. With a view to doing so, it would certainly be worth considering adopting at the outset general principles governing exchanges of information (principles relating to purpose, proportionality and, in the near future, availability) and also, in the light of the needs of police authorities, a code or manual of good practice for use by the police, explaining to them in very simple and practical terms the framework within which they must act, particularly with regard to data protection.

## **2. The proposal for a Council decision and the draft framework decision proposed by the Kingdom of Sweden**

### *(a) Scope of the proposals under consideration*

The Commission's proposal is based on the idea that the persistence of the terrorist threat makes it necessary to try to improve effectiveness. The battle against terrorism therefore on the one hand requires the Member States to provide Europol and/or Eurojust systematically with intelligence about everybody with links to terrorist activities and on the other hand requires the Member States to exchange information in this field amongst themselves, 'in accordance with national law and relevant legal instruments'.

The Kingdom of Sweden's draft takes as its starting point the observation that fighting crime is very often seen vertically, with measures being taken only in relation to the type of offence, without considering whether or not it is the work of organised criminals. This approach may lead to a situation in which differing fields of responsibility, different mandates for cooperation, and different national legislation or procedures become real obstacles to the gathering and exchange of information within the Union.

The Kingdom of Sweden therefore wishes to assign priority to a horizontal approach, emphasising measures against crime as such and according less importance to the specific remits of the national crime-fighting authorities. The aim envisaged is to create a common simplified legal framework for exchanging information, applicable to all national authorities which have a law enforcement function. Under this system the powers assigned to an authority by national legislation with regard to detecting and preventing crime and carrying out inquiries must be recognised by the other Member States, and an authority must be able to request and obtain information and intelligence from the other Member States without having to meet any formal requirements other than those laid down by the framework decision. This common legal framework, it should be emphasised, would relate only to exchanges of information on police matters: it would not apply to judicial cooperation at all.

*(b) Complementarity of the proposals by the Commission and the Swedish Government*

From the technical point of view, the Commission proposal assigns priority to centralising information at Europol and Eurojust, while the proposal by the Kingdom of Sweden ignores the subject of centralisation but seeks to speed up significantly exchanges of information.

The Commission proposal certainly has the advantage of expanding the scope of exchanges of information to include all terrorist offences as referred to in Framework Decision 2002/475/JAI, without limiting them to the list of persons and bodies which appears in the annex to common position 2001/931/PESC. However, it is open to question whether the proposal has any other added value. The procedure which the Commission seeks to establish largely reproduces obligations which already exist on other grounds, particularly under the Europol Convention and the Council Decision setting up Eurojust.

For example, Article 4 of the Europol Convention already requires Member States to designate a national unit within their police authorities to act as a liaison body between the national authorities and Europol. The national unit must have access to all 'relevant national data', which it must keep up to date with a view, in particular, to forwarding them to Europol. The 'relevant national data' referred to in Article 4 do cover the terrorist offences to which the Commission proposal refers, as Article 2 of the Europol Convention expressly lays down that Europol is to deal with 'crimes committed or likely to be committed in the course of terrorist activities against life, limb, personal freedom or property'.

Similarly, Article 12 of the Council Decision setting up Eurojust already lays down that each Member State may put in place or appoint one or more national correspondents for Eurojust, stipulating that 'it shall be a matter of high priority to put in place or appoint such a correspondent for terrorism matters.' Like the Commission proposal, Articles 9 and 12 of the Eurojust Statute refer to domestic law for the definition of the nature and scope of the judicial powers entrusted to its national members within national territory.

A priori, the proposal by the Kingdom of Sweden definitely seems to be of interest in comparison with the systems provided for by the Europol Convention, the Eurojust Statute and the Commission proposal, because, by providing for direct contact between specialised authorities without imposing conditions additional to those which exist internally for contacts between law enforcement authorities, it would make it possible to overcome a number of difficulties relating to the specific judicial organisation of each Member State. Thus information could circulate more quickly, which is clearly essential for the purpose of fighting any crime.

Questions could undoubtedly also be asked about the added value of Sweden's proposal on the grounds that the Convention Implementing the Schengen Agreement already lays down arrangements for police cooperation which are broadly based on the same ideas.

Article 39 of the Convention requires the Contracting Parties to undertake to ensure 'that their police authorities shall, in compliance with national legislation and within the limits of their responsibilities, assist each other for the purposes of preventing and detecting criminal offences'. Article 46 permits each Contracting Party, in particular cases, in compliance with its national legislation and without being asked, to send another Contracting Party concerned

'any information which may be of interest to it in helping prevent future crime and to prevent offences against or threats to public order and security.'

However, a study of the provisions reveals differences which are not without importance. Article 39 limits cooperation between police authorities to cases in which 'national law does not stipulate that the request [for information] is to be made to the legal authorities', a restriction which does not appear in Sweden's proposal, Article 4 of which merely stipulates that 'Member States shall ensure that information and intelligence, held by or accessible without the use of coercive means to competent law enforcement agencies, can be provided to the competent law enforcement authorities of other Member States'.

Article 46(2), meanwhile, lays down that, where information is provided spontaneously to a party concerned, the information is to be exchanged 'through a central body to be designated'. The direct exchange of information, i.e. between one authority and another, which is in principle the system proposed by the Kingdom of Sweden, is here permitted only on a strictly exceptional basis, 'in particularly urgent cases', and on condition that the central body is informed of it as soon as possible.

Thus the system provided for by Articles 39 and 46 of the Convention Implementing the Schengen Agreement does not allow the same flexibility as Sweden's proposal when it comes to providing data, and above all does nothing to eliminate the risk of obstacles arising from the Contracting Parties' internal judicial systems: even in urgent cases, these articles do not permit direct communication 'where national provisions provide otherwise'.

Thus the proposal by the Kingdom of Sweden seems to entail genuine added value in comparison with the law as it stands. Another advantage of the proposed system is that it sets a deadline to be observed in principle (12 hours) for the provision of the information requested. The excessive length of the procedure is one of the obstacles currently encountered in practice, particularly in Europol.

Lastly, even if the innovations proposed in the Kingdom of Sweden's draft are not considered significant enough in comparison with the system provided for in Articles 39 and 46 of the Convention Implementing the Schengen Agreement, it may be noted that it at least has the advantage of extending the principle of cooperation between law enforcement authorities to the 25 Member States, not all of which are parties to the Schengen Agreement.

In view of the above considerations and the importance of what is at stake, it seems worth pursuing the cumulative advantages afforded by the two systems proposed by the Commission and the Kingdom of Sweden. A policy geared to providing information efficiently between Member States requires provision for swift bilateral exchange of information between specialised agencies, ensuring that such exchanges are not paralysed by problems arising from the specific characteristics of the internal judicial organisation of the individual Member States, while at the same time such a policy must also enable the most significant information to be forwarded systematically to Europol and/or Eurojust.

It may be noted that the cumulative approach advocated here accords with the statements made by the European Council on 4 and 5 November 2004, when it expressly mentioned its desire for exchanges of information for the purpose of fighting terrorism to be based, as from



1 January 2008, on the principle of availability, whereby, within the Union, any officer of the law enforcement authorities of a Member State who needed certain information in order to carry out his duties could obtain it from another Member State, and the law enforcement authorities of the other Member State which held the information would be required to provide it for the purposes stated and taking account of the requirements of the inquiries under way in the other State.

The European Council also called on the Commission to submit by the end of 2005 proposals for applying the principle of availability. This will be a suitable occasion on which to begin the vital work of harmonising the existing rules.

*(c) Obligation to provide information*

The text of the proposal by the Kingdom of Sweden explicitly states the grounds on which a law enforcement authority is permitted to refuse to provide information. The Commission proposal, on the other hand, says nothing about this.

If the provisions are not to include an obligation to provide information to Europol, it would certainly be sufficient - for the purpose of ensuring that the information exchange system established is effective enough - to include a provision, as the proposal by the Kingdom of Sweden does, placing the emphasis on the obligation for Member States to justify any refusal to supply information.

*(d) The distinction between information and intelligence*

As they stand, and in view of the arguments on which they are based, the proposals both of the Commission and of the Kingdom of Sweden expressly confine themselves to the provision of police and judicial information, i.e. existing information. However, it is necessary to consider the issue of seeking out information, i.e. intelligence-gathering. Gathering and exchanging intelligence is of fundamental importance to efforts to control terrorism: information arising from judicial procedures or police inquiries often comes too late.

In addition to exchanges of police information, therefore, it is absolutely necessary to insist that arrangements should also be made to facilitate the communication of intelligence, particularly as part of an early warning system.

*(e) Protection of personal data*

As our positive law currently stands, there are numerous data protection provisions which could be applied, particularly the Council of Europe Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data of 28 January 1981, which may be regarded as laying down minimum provisions. Attention may also be drawn to a set of provisions on this subject in the Europol Convention or, for those Member States which are parties to the Schengen Agreement, the provisions on data protection in the Schengen Implementing Convention.

The proposal for a Council decision does not provide for any specific measure in this field. The proposal by the Swedish Government calls on States, primarily, to 'ensure that the

established rules and standards on data protection ... are applied also within the procedure on exchange of information'.

The general objective of consistency requires the Commission's attention to be particularly drawn to the need to make a proposal for harmonising the existing rules on data protection.

### **3. European register of convictions**

Both in its communication and in the Explanatory Memorandum on the proposal for a Council decision, the Commission mentions the desirability of establishing a European register of convictions and disqualifications. However, all that the Commission says about this is that it 'will continue analysing this horizontal issue and will seek out the most appropriate solutions before presenting a proposal for the establishment of a register' and that it will sound out the Member States in 2004. It did not take the matter up in the four communications on fighting terrorism which it published on 20 October 2004, nor did the European Council raise the matter on 4 and 5 November 2004.

Everybody is aware, and events regularly remind us, of the fundamental importance of a European register of convictions, to assist the fight both against terrorism and against all forms of serious crime. Regrettably, it must be concluded that the practical progress which has been made in this regard has been extremely timid, although it is certainly to be applauded that political agreement has just been reached within Coreper on a draft intended to facilitate exchanges of information between criminal records departments, a text on which the Luxembourgish Presidency has recently (at the Justice and Home Affairs Council of 25 February 2005) asked the Member States to waive their parliamentary reservations so that it can be adopted swiftly.

At all events it is vital that the Commission should assign real priority to attaining this objective, and should adopt a precise and tight timetable for doing so. Apart from the obvious strategic importance of this, it may also be noted that the citizens of the Union legitimately expect this measure.

### **4. Transparency of bank accounts and of legal persons**

The Commission communication states that it is important both to adopt legal provisions which make it possible for the Member States to register bank accounts so as to identify their holders, and to develop measures to improve the transparency of legal persons, both measures being vital in order to counter infiltration by criminal groups and terrorist organisations. The Commission reiterated this concern in its communication of 20 October 2004 on combating the financing of terrorism. In this context the Commission suggests giving financial intelligence authorities free access to banks' databases. The information would remain encrypted except where it concerned a person or group of persons suspected of having links with a terrorist movement.

Apart from the important questions raised by these proposals in terms of protection of personal data, it should be noted that, as in the case of the problem of the European register of convictions, neither precise procedures nor a timetable have yet been decided. Here too, the Commission should assign real priority to this matter and adopt precise deadlines.

1.4.2005

## **OPINION OF THE COMMITTEE ON FOREIGN AFFAIRS**

for the Committee on Civil Liberties, Justice and Home Affairs

on the proposal for a Council decision on the exchange of information and cooperation concerning terrorist offences  
(COM(2004)0221 - 15599/2004 – C6-0007/2004 – 2004/0069(CNS))

Draftsman: István Szent-Iványi

### **SHORT JUSTIFICATION**

Since the September 11 events, there have been alarming and far-reaching changes in the security dimension, as well as in the civil and international human rights standards and norms in Europe and in the rest of the World. While the fight against terrorism has been the context for these changes, many of the measures taken have had little success with effectively countering terrorism and raising people's security (e.g. the Madrid terrorist attacks), but are rather concerned with redefining rights and norms, expanding controls and restrictions.

The draftsman welcomes the draft Council Decision as an important step towards better coordination of efforts in the fight against terrorism between the EU authorities, Europol and Eurojust, and the responsible national authorities of the Member States. However, the draftsman notes that the draft Decision is only one of the series of legislative measures necessary for making a wide-ranging, effective cooperation possible. He also feels that it is important to emphasise the necessity of striking a sensitive balance between the fight against terrorism and human rights, and believes that in this regard this legislative proposal needs to contain a clause on data protection in the exchange and use of information.

For these reasons, the draftsman presents amendments which defend Parliament's position that the exchange of information concerning terrorist offences in the Member States of the EU should not be kept outside the scope of continuous and effective cooperation within the EU institutions, between the EU and its Member States, its candidate states and its future member states as well as between the EU and the USA, while complying with the international data protection standards.

### **AMENDMENTS**

The Committee on Foreign Affairs calls on the Committee on Civil Liberties, Justice and Home Affairs, as the committee responsible, to incorporate the following amendments in its report:

## Amendment 1

## Recital 5

(5) The objectives of the proposed action cannot be satisfactorily attained by the Member States acting alone and can therefore, given the need for reciprocity, be better attained by the Union, which may accordingly act in accordance with the subsidiarity principle. In accordance with the principle of proportionality, this Framework Decision does not go beyond what is necessary to attain those objectives.

(5) The objectives of the proposed action cannot be satisfactorily attained by the Member States acting alone and can therefore, given the need for reciprocity, be better attained by ***closer cooperation between Member States and by*** the Union, which may accordingly act in accordance with the subsidiarity principle. In accordance with the principle of proportionality, this Framework Decision does not go beyond what is necessary to attain those objectives.

*Justification*

*70% of the information exchanged through Europol is exchanged on a bilateral basis and this amendment recognises this reality.*

## Amendment 2

## Recital 5 a (new)

***(5a) Member States are determined to take further steps towards the rapid ratification of all international conventions and protocols relevant to the fight against terrorism, including the protocols amending the Europol Convention, and are committed to further promote the process of universal ratification by third countries of the relevant international instruments related to the fight against terrorism and the provision by those countries of aid and technical assistance in their implementation.***

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<sup>1</sup> Not yet published in OJ.

### *Justification*

*The ratification of the protocols amending the Europol Convention is necessary for ensuring a wider Europol mandate and also possibility for the cooperation in the exchange of information with a third country, such as the US. The EU should promote the universal ratification of relevant international agreements by the candidate countries and third countries, which have difficulties in tackling terrorist activities and the provision of aid and technical assistance in their implementation.*

### Amendment 3 Article 2, paragraph 6

6. Each Member State shall take the necessary measures to ensure that any relevant information included in document, file, item of information, object or other means of evidence, seized or confiscated in the course of criminal investigations or criminal proceedings in connection with terrorist offences can be made accessible or available immediately to the authorities of other interested Member States in accordance with national law and relevant international legal instruments where investigations are being carried out or might be initiated, or prosecutions are in progress in connection with terrorist offences.

6. Each Member State shall take the necessary measures to ensure that any relevant information included in document, file, item of information, object or other means of evidence, seized or confiscated in the course of criminal investigations or criminal proceedings in connection with terrorist offences can be made accessible or available immediately to the authorities of other interested Member States in accordance with national law and relevant international legal instruments where investigations are being carried out or might be initiated, or prosecutions are in progress in connection with terrorist offences;  
***Member States receiving such information shall undertake to protect it in accordance with the same standards of confidentiality as those applied by the originating state and to notify the originating state forthwith of related information in their possession.***

### *Justification*

*There needs to be confidence that information will be treated with appropriate security and that the passage of information is not just in one direction.*

Amendment 4  
Article 4 a (new)

*Article 4a*

***Human rights and fundamental freedoms***

***The Member States shall ensure that the submission and exchange of information required by this Decision, and its subsequent use, is in accordance with human rights and fundamental freedoms, including the established standards and rules on data protection and protection of the individual against the abuse of data.***

Amendment 5  
Article 5 a (new)

*Article 5a*

***Reports by Europol and Eurojust***

***Europol and Eurojust shall submit an annual report to the Council and the European Parliament.***

*Justification*

*Taking into account the complexity of terrorist-linked offences, there is a necessity to create a closer linkage between Europol, Eurojust and the EU policy-making level. Reporting back to the Council and the European Parliament is a way to ensure more effective EU counter-terrorist policies as well as a parliamentary control of the bodies.*

Amendment 6  
Article 5 b (new)

**Article 5b**

**Feasibility study**

***The Commission shall conduct a feasibility study on the readiness and capability of the candidate countries and European neighbouring countries to be involved in the exchange of information on terrorist offences, and shall take the necessary steps to facilitate their participation.***

*Justification*

*The feasibility and possible ways of including Bulgaria, Croatia, Romania and Turkey in the exchange of information related to terrorist offences should be examined in order to widen the scope of cooperation and prepare the candidate States for their tasks as Member States.*

*The study should also extend its geographical scope in order to cover the readiness and capabilities of the European neighbouring countries to cooperate in this information process.*

## PROCEDURE

<b>Title</b>	Proposal for a Council decision on the exchange of information and cooperation concerning terrorist offences
<b>References</b>	(COM(2004)0221 - 15599/2004 – C6-0007/2004 – 2004/0069(CNS))
<b>Committee responsible</b>	LIBE
<b>Committee asked for its opinion</b> Date announced in plenary	AFET 15.9.2004
<b>Enhanced cooperation</b>	No
<b>Drafts(wo)man</b> Date appointed	István Szent-Iványi 13.9.2004
<b>Discussed in committee</b>	15.3.2005      29.3.2005
<b>Date amendments adopted</b>	30.3.2005
<b>Result of final vote</b>	for:                                49 against:                            4 abstentions:                      1
<b>Members present for the final vote</b>	Vittorio Emanuele Agnoletto, Angelika Beer, André Brie, Philip Claeys, Simon Coveney, Ryszard Czarnecki, Véronique De Keyser, Giorgos Dimitrakopoulos, Camiel Eurlings, Alfred Gomolka, Klaus Hänsch, Richard Howitt, Toomas Hendrik Ilves, Bogdan Klich, Helmut Kuhne, Joost Lagendijk, Vytautas Landsbergis, Francisco José Millán Mon, Pierre Moscovici, Baroness Nicholson of Winterbourne, Raimon Obiols i Germà, Alojz Peterle, Tobias Pflüger, Bernd Posselt, Michel Rocard, Raül Romeva i Rueda, José Ignacio Salafranca Sánchez-Neyra, Jacek Emil Saryusz-Wolski, Gitte Seeberg, Marek Maciej Siwiec, Konrad Szymański, Charles Tannock, Inese Vaidere, Geoffrey Van Orden, Ari Vatanen, Luis Yañez-Barnuevo García, Josef Zieleniec
<b>Substitutes present for the final vote</b>	Laima Liucija Andrikiienė, Carlos Carnero González, Alexandra Dobolyi, Árpád Duka-Zólyomi, Hélène Flautre, Kinga Gál, Jaromír Kohlíček, Pasqualina Napoletano, Doris Pack, Athanasios Pafilis, Rihards Pīks, Aloyzas Sakalas, Anders Samuelson, Inger Segelström, Csaba Sándor Tabajdi
<b>Substitutes under Rule 178(2) present for the final vote</b>	Christofer Fjellner, Bronisław Geremek



9.3.2005

## **OPINION OF THE COMMITTEE ON LEGAL AFFAIRS**

for the Committee on Civil Liberties, Justice and Home Affairs

on the proposal for a Council decision on the exchange of information and cooperation concerning terrorist offences  
(COM(2004)0221 – C6-0007/2004 – 2004/0069(CNS))

Draftsman: Antonio López-Istúriz White

### **SHORT JUSTIFICATION**

The fight against terrorism has to be a priority objective for the Union, which, sparing no efforts, must be able to call upon the means of action needed to safeguard our most prized assets: the lives and freedom of our citizens.

The horrifying attacks on 11 September highlighted the need for the Union to treat the war on terrorism as a priority. Sadly, Spain had to endure the blood-soaked morning of 11 March 2004. Terror struck again with random cruelty, this time on European soil, in a country which has been plagued for decades by callous, despicable murderers.

11-M changed the history of Europe, and with it the history of the European Union. The terrorist attacks targeted our common project and our system of peaceful coexistence, democracy, and freedom: in short, the very way of life that Europeans enjoy.

The question of the particular weapons with which to fight terrorism needed to be approached from a new angle, for terrorism should not be regarded as a monolithic phenomenon. The inference to be drawn is that, although they are all equally execrable, there are distinct types of terrorism, which vary according to the means used, the specific strategies employed, the perpetrators or groups of perpetrators, and the individual horrific consequences of the attacks. Consequently, we need to be able to pinpoint the targets that we wish to deal with and to devise appropriate ways of fighting each and every one of them and hence each and every type of terrorism.

The fight must not, therefore, be based solely on steps taken in reaction; it is clear that the best way to combat the different types of terrorism is to prevent them.

A rapid bilateral exchange of information between the Member States' specialised services and the possibility of passing on more important information to Europol and/or Eurojust, as a matter of routine, could do much to forestall terrorist attacks. However, to make the exchange of information effective, mutual trust needs to be strengthened between the Member States'

police services, and common interpretation criteria laid down to ensure that Europol and the Member States interpret data in the same way.

As regards the proposed European register of convictions, the Council decision surprisingly fails to provide for it. We feel that we have to be more ambitious than the Commission and not merely recommend that a register of convictions and disqualifications be compiled at European level. If we really want to prevent terrorism, it is not enough simply to hope that such a register might be introduced: on the contrary, we must urge the Commission and Council to focus their efforts so that the register can indeed be set up immediately, bearing in mind especially that the purpose which it would serve would help us to attain our goal of defeating terrorism, safeguarding the common area of freedom, security, and justice, and protecting freedom, democracy, and, above all, the lives of our citizens.

No difficulty must stand in the way of effective protection of freedom and the right to life; no obstacle, no matter how hard the Twenty-Five might need to work in order to surmount it, must delay us in achieving our common goal.

For all these reasons, we consider the proposal for a decision to be sound, since it will assist progress towards the priority objective of preventing, combating, and eradicating terrorism. However, we recommend that the Council put forward the measures to be taken with a view to setting up the European register of convictions.

## **CONCLUSION**

The Committee on Legal Affairs calls on the Committee on Civil Liberties, Justice and Home Affairs, as the committee responsible, to endorse the proposal for a decision.

**PROCEDURE** <sup>(1)</sup>

<b>Title</b>	Proposal for a Council decision on the exchange of information and cooperation concerning terrorist offences
<b>Procedure number</b>	(COM(2004)0221 – C6-0007/2004 – 2004/0069(CNS))
<b>Committee responsible</b>	LIBE
<b>Committee asked for its opinion</b> Date announced in plenary	JURI 15.9.2004
<b>Enhanced cooperation</b>	
<b>Drafts(wo)man</b> Date appointed	Antonio López-Istúriz White 24.11.2004
<b>Discussed in committee</b>	19.1.2005    2.2.2005    7.3.2005
<b>Date suggestions adopted</b>	7.3.2005
<b>Result of final vote</b>	for:                    23 against:                1 abstentions:           1
<b>Members present for the final vote</b>	Maria Berger, Bert Doorn, Monica Frassoni, Giuseppe Gargani, Klaus-Heiner Lehne, Marcin Libicki, Alain Lipietz, Antonio López-Istúriz White, Antonio Masip Hidalgo, Viktória Mohácsi, Aloyzas Sakalas, Francesco Enrico Speroni, Daniel Stroz, Theresa Villiers, Diana Wallis, Nicola Zingaretti, Jaroslav Zvěřina
<b>Substitutes present for the final vote</b>	Alexander Nuno Alvaro, Jean-Paul Gauzès, Luis de Grandes Pascual, Adeline Hazan, Barbara Kudrycka, Kurt Lechner, Evelin Lichtenberger, Arlene McCarthy, Marie Panayotopoulos-Cassiotou, József Szájer
<b>Substitutes under Rule 178(2) present for the final vote</b>	Harald Ettl

## PROCEDURE

<b>Title</b>	Proposal for a Council decision on the exchange of information and cooperation concerning terrorist offences			
<b>References</b>	COM(2004)0221- 15599/2004 – C6-0007/2004 – 2004/0069(CNS))			
<b>Legal basis</b>	Article 39, para. 1, TEU			
<b>Basis in Rules of Procedure</b>	Rules 93 and 51			
<b>Date of consulting Parliament</b>	22.4.2004			
<b>Committee responsible</b> Date announced in plenary	LIBE 15.09.2004			
<b>Committee(s) asked for opinion(s)</b> Date announced in plenary	AFET 15.9.2004	JURI 15.9.2004		
<b>Not delivering opinion(s)</b> Date of decision				
<b>Enhanced cooperation</b> Date announced in plenary	--			
<b>Rapporteur(s)</b> Date appointed	Antoine Duquesne 27.7.2004			
<b>Previous rapporteur(s)</b>	--			
<b>Simplified procedure</b> Date of decision	--			
<b>Legal basis disputed</b> Date of JURI opinion				
<b>Financial endowment amended</b> Date of BUDG opinion				
<b>European Economic and Social Committee consulted</b> Date of decision in plenary	0.0.0000			
<b>Committee of the Regions consulted</b> Date of decision in plenary	0.0.0000			
<b>Discussed in committee</b>	27.4.2004	5.10.2004	31.3.2005	24.5.2005
<b>Date adopted</b>	24.5.2005			
<b>Result of final vote</b>	for:	40		
	against:	0		
	abstentions:	4		
<b>Members present for the final vote</b>	Alexander Nuno Alvaro, Edit Bauer, Mario Borghezio, Mihael Brejc, Maria Carlshamre, Giusto Catania, Charlotte Cederschiöld, Carlos Coelho, Fausto Correia, Agustín Díaz de Mera García Consuegra, Rosa Díez González, Antoine Duquesne, Elly de Groen-Kouwenhoven, Lívia Járóka, Timothy Kirkhope, Ewa Klamt, Magda Kósáné Kovács, Wolfgang Kreissl-Dörfler, Barbara Kudrycka, Stavros Lambrinidis, Henrik Lax, Sarah Ludford, Edith Mastenbroek, Jaime Mayor Oreja, Claude Moraes, Martine Roure, Amalia Sartori, Inger Segelström, Ioannis Varvitsiotis, Stefano Zappalà, Tatjana Ždanoka			
<b>Substitutes present for the final vote</b>	Frederika Brepoels, Ignasi Guardans Cambó, Luis Francisco Herrero-Tejedor, Sophia in 't Veld, Sylvia-Yvonne Kaufmann, Mary Lou McDonald, Antonio Masip Hidalgo, Javier Moreno Sánchez, Bill Newton Dunn, Herbert Reul, Marie-Line Reynaud, Agnes			

	Schierhuber,
<b>Substitutes under Rule 178(2) present for the final vote</b>	Antonio López-Istúriz White
<b>Date tabled – A[6]</b>	26.05.2005 A6-0160/2005
<b>Comments</b>	...