COUNCIL OF THE EUROPEAN UNION

Brussels, 6 December 2004

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LIMITE

CRIMORG 145
ENFOPOL 191
EUROPOL 59
EUROJUST 98

OUTCOME OF PROCEEDINGS

From :	General Secretariat
To :	Delegations
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Subject :	Draft Council Decision on the exchange of information and cooperation concerning terrorist offences

At the meeting of the Council on 2 December 2004 a general approach was reached on the attached text.

The following delegations still have parliamentary scrutiny reservations: FR/IRL/NL and UK.

The Council has asked the European Parliament for its opinion on 22 April 2004.

ANNEX

Proposal for a

COUNCIL DECISION

on the exchange of information and cooperation concerning terrorist offences

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Articles 29, 30(1), 31 and 34(2)(c) thereof,

Having regard to the proposal from the Commission,

Having regard to the Opinion of the European Parliament,

Whereas:

(1) At its extraordinary meeting on 21 September 2001, the European Council stated that terrorism was a real challenge to the world and to Europe and that the fight against terrorism would be a priority objective of the European Union.

(2) On 19 October 2001 the European Council stated that it was determined to combat terrorism in every form throughout the world and that it would continue its efforts to strengthen the coalition of the international community to combat terrorism in every shape and form, for example by increased cooperation between the operational services responsible for combating terrorism: Europol, Eurojust, the intelligence services, police forces and judicial authorities.

(3) It is essential in the fight against terrorism for the relevant services to have the fullest and most up-to-date information possible in their respective fields. The Member States' specialised national services, the judicial authorities and relevant European Union bodies such as Europol and Eurojust absolutely need information if they are to perform their tasks.

(4) Decision 2003/48/JHA of 19 December 2002 is a major step forward. The persistence of the terrorist threat and the complexity of the phenomenon raise the need for ever greater exchanges of information. The scope of information exchanges must be extended to all stages of criminal proceedings, including convictions, and to all individuals and bodies corporate, groups or entities investigated, prosecuted or convicted for terrorist offences.

(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 Decision does not go beyond what is necessary to attain those objectives.

5a) In the execution of the exchange of information, this Decision is without prejudice to essential national security interests, the jeopardizing of the success of a current investigation or the safety of individuals, or specific intelligence activities in the field of State security.

(6) This Decision respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union,

HAS DECIDED AS FOLLOWS:

Article 1

Definitions

For the purposes of this Decision, the following definitions shall apply:

(a) "terrorist offences": the offences specified in Articles 1 to 3 of Council Framework Decision 2002/475/JHA of 13 June 2002 on combating terrorism[1];

[1] OJ L 164, 22.6.2002, p.3.

(b) "Europol Convention": the Convention of 26 July 1995 on the establishment of a European Police Office [1];

(c) "Eurojust Decision": the Council Decision 2002/187/JHA of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime [2];

(d) "group or entity": "terrorist groups" within the meaning of Article 2 of Council Framework Decision 2002/475/JHA of 13 June 2002 and the groups and entities listed in the Annex to Common Position 2001/931/CFSP.

Article 2

Exchanges of information concerning terrorist offences

1. Each Member State shall designate a specialised service within its police services or other law enforcement authorities, which, in accordance with national law, will have access to and collect all relevant information concerning and resulting from criminal investigations conducted by its law enforcement authorities with respect to terrorist offences, and send it to Europol in accordance with paragraphs 3 and 4.

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.

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:

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[1] OJ C 316, 27.11.1995, p.2.
[2] OJ L 63, 6.3.2002, p.1.

a) Europol, in accordance with national law and with the provisions of the Europol Convention, for processing; and

b) Eurojust, in accordance with national law and where the provisions of the Eurojust Decision so allow, in order to enable Eurojust to perform its tasks.

4. The information to be transmitted in accordance with paragraph 3 to Europol is the following:

a) data which identify the person, group or entity;

b) acts under investigation and their specific circumstances;

c) the offence concerned;

d) links with other relevant cases;

e) the use of communication technologies;

f) the threat posed by the possession of weapons of mass destruction.

4a. The information to be transmitted in accordance with paragraph 3 to Eurojust is the following:

a) data which identify the person, group or entity that is the object of a criminal investigation or prosecution ;

b) the offence concerned and its specific circumstances;

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

d) links with other relevant cases;

e) requests for judicial assistance, including letters rogatory, addressed to or by another Member State and the response;

5. 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 as soon as possible, taking account not to jeopardize current investigations, 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.

Article 3

Joint investigation teams

In appropriate cases the Member States shall take the necessary measures to set up joint investigation teams to conduct criminal investigations into terrorist offences.

Article 4

Requests for judicial assistance and enforcement of judgments

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 judgments in connection with terrorist offences are dealt with as a matter of urgency and shall be given priority.

Article 5

Repeal of existing provisions

Decision 2003/48/JHA is repealed.

Article 5 bis

Implementation

Member States shall take the necessary measures to comply with the provisions of this Decision at the latest by [insert date 9 months after the entry into force].

Article 6

Entry into force

This Decision shall enter into force on the day following its publication in the *Official Journal of the European Union*.

Done at Brussels,

The President *For the Council*