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COMMUNICATION FROM THE COMMISSION TO THE COUNCIL AND THE EUROPEAN PARLIAMENT

on measures to be taken to combat terrorism and other forms of serious crime, in particular to improve exchanges of information

Proposal for a

COUNCIL DECISION

on the exchange of information and cooperation concerning terrorist offences

(presented by the Commission)

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1. INTRODUCTION

The terrorist attacks in New York and Washington on 11 September 2001 were followed by a series of acts of terrorism elsewhere in the world in 2002 and 2003. On 11 March 2004 Spain was the victim of brutal and deadly terrorist attacks. These violent events serve as a vivid reminder of the persistence of the threat of terrorism in Europe or against European interests. Although large-scale measures have been taken, we must continue to fight relentlessly against such atrocities and show our determination to combat this odious phenomenon, which goes against the principles of respect for human dignity and fundamental rights on which Europe is founded.

Terrorism is a phenomenon with complex and various causes and implications. Given its serious implications for the economy, the terrorist threat, which is a burden for individuals and firms alike, can imperil their confidence and thus be a negative factor for economic growth and the preservation of an investment-friendly climate.

It is therefore essential that the fight against terrorism remain high on the European Union's priority list. The European Union and the Member States have made great progress in a range of areas, but the persistence of the terrorist threat and the complexity of the fight against the phenomenon raise the need to come up with innovative solutions in the Union[1]. To eradicate the phenomenon, and above all to attack terrorism as close as possible to its foundations, action must be taken on the sources of finance of terrorist organisations. But action on the sources and networks of terrorist funding is particularly difficult. As in the case of laundering the proceeds of organised crime, terrorist funding is based on highly secret operations conducted on an international scale, often using parallel circuits.

The purpose of this Communication is to set guidelines to amplify the rules and regulations already available in the Union while striking a balance between a variety of constraints: a higher level of security as well as respect for fundamental rights[2], in particular the right to privacy and to protection of personal data.

The impact of all the new measures on fundamental rights will accordingly have to be analysed and compared with the expected value added in security terms, the

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1 In 2004 the Commission is planning to launch a "Preparatory Action on the enhancement of the European industrial potential in the field of security research". The aim is to improve the public's security by means of technological research and development. Among the priority topics, the plan is to develop specific projects to face up to the different types of terrorist threat, in line with the European Security Strategy now being finalised.

2 Articles 7 and 8 of the Charter of Fundamental Rights of the European Union enshrine the right to privacy and the right to protection of personal data.

objective always being to come up with appropriate, balanced and proportionate solutions[3].

2. THE FIGHT AGAINST TERRORISM: A STRONGER EUROPEAN COMMITMENT

The fight against terrorism was already a major concern in the European Union before the attacks of 11 September 2001[4], but after 11 September the Heads of State or Government decided that this would more than ever before be a priority objective. They approved a plan of action which included enhanced police and judicial cooperation, the development of international legal instruments and putting an end to terrorist funding[5].

The European Council stated that it was determined to combat terrorism in all its forms and everywhere in the world and that it would pursue its efforts to strengthen the coalition formed by the international community to fight against every aspect of terrorism. In particular it asked for special attention to be paid to effectively combating the funding of terrorism.

The conclusions of the European Council of 21 September 2001 state that "*Combating the funding of terrorism is a decisive aspect. Energetic international action is required to ensure that that fight is fully effective. The European Union will contribute to the full. To that end, the European Council calls upon the ECOFIN and Justice and Home Affairs Councils to take the necessary measures to combat any form of financing for terrorist activities…".*

The keen mobilisation of the Member States, the Council and the Commission meant that legislative and operational measures were quickly taken, considerably boosting the Union's arsenal of weapons against terrorism[6]. Many of these are not specifically anti-terrorism but range wider while including terrorism, and particularly the funding of terrorism[7].

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3 See the report on the situation of fundamental rights in the European Union and the Member States in 2002, presented to the European Commission by the European Network of Independent Experts on 31 March 2003 (http://europa.eu.int/comm/justice_home/index_en.htm).

4 For instance, Council Joint Action 96/610/JHA of 15 October 1996 concerning the creation and maintenance of a Directory of specialised counter-terrorist competences, skills and expertise to facilitate counter-terrorist cooperation between the Member States of the European Union; and Council Recommendation of 9 December 1999 on cooperation in combating the financing of terrorist groups (OJ C 373, 23.12.1999, p.1).

5 Extraordinary informal European Council in Brussels, 21 September 2001 (www.europarl.eu.int/summits/pdf/bru_en.pdf).

6 The measures taken by the Union are set out in Commission staff working paper SEC (2003) 414 of 28 March 2003 on actions to combat the financing of terrorism, produced as requested by the Joint Ecofin & Justice and Home Affairs Council on 16 October 2001.

7 For instance, Council Act of 16 October 2001 establishing, in accordance with Article 34 of the Treaty on European Union, the Protocol to the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union; Parliament and Council Directive 2001/97/EC of 4 December 2001 amending Council Directive 91/308/EEC on prevention of the use of the financial system for the purpose of money laundering; Council Decision of 6 December 2001 extending Europol's mandate to deal with the serious forms of international crime listed in the Annex to the Europol Convention; Council Decision 2002/187/JHA of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime; Council Framework Decision 2002/465/JHA of 13

Others specifically target terrorism: these include measures based on UN Security Council Resolutions[8] and measures to equip the European Union with the means to combat terrorism[9].

Current or future activities are set out in the report of 28 March 2003 on actions undertaken or planned to combat the financing of terrorism[10].

In addition to these measures, new projects need to be put in hand to boost the fight against terrorism and other serious forms of crime.

3. THE FACILITIES AVAILABLE FOR COMBATING CRIME IN THE EU NEED BOOSTING

(a) A link should be established between measures to combat organised crime and terrorism.

The links between terrorism and other forms of crime, in particular organised crime, are not always immediately obvious.

But there are links between the two phenomena – between methods, but sometimes also between the actual groups[11].

The financing of terrorism has been an offence in the Union since Framework Decision 2002/475/JHA on the fight against terrorism, which applies to all forms of financing of the activities of a terrorist group. This also makes it possible to tackle,

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June 2002 on joint investigation teams; Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant.

8 The measures based on UN Security Council Resolutions include: Council Common Position 2001/930/CFSP of 27 December 2001 on combating terrorism, which directly seeks to combat the financing of terrorism and takes over provisions from UN Security Council Resolution 1373 (2001); Council Common Position 2001/931/CFSP of 27 December 2001 on the application of specific measures to combat terrorism, the Annex to which lists persons, groups and entities involved in terrorist acts; Council Regulation (EC) No 2580/2001 of 27 December 2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism; Council Decision 2001/927/EC of 27 December 2001 establishing the list provided for in Article 2(3) of Council Regulation (EC) No 2580/2001, replaced by Decision 2003/646/EC (OJ L 229, 13.9.2003, p. 22); Council Common Position 2002/402/CFSP of 27 May 2002 concerning restrictive measures against Usama bin Laden, members of the Al-Qaida organisation and the Taliban and other individuals, groups, undertakings and entities associated with them and repealing Common Positions 96/746/CFSP, 1999/727/CFSP, 2001/154/CFSP and 2001/771/CFSP; Council Regulation (EC) No 881/2002 of 27 May 2002; Council Decision 2003/48/JHA of 19 December 2002 on the implementation of specific measures for police and judicial cooperation to combat terrorism in accordance with Article 4 of Common Position 2001/931/CFSP.

9 For instance, establishment of a team of experts to combat terrorism in Europol; the Justice and Home Affairs Council on 20 September 2001 decided to establish a team of experts in anti-terrorist activities in Europol to gather in good time all relevant information and data on the current threat, analyse it and carry out the requisite operational and strategic analyses. Framework Decision 2002/475/JHA of 13 June 2002 on combating terrorism, adopted on the basis of a Commission initiative, is now the common legislative foundation for criminal law in the Union. It approximates offences and penalties in the Union. It defines terrorist offences: terrorist offences as such and offences related to a terrorist group, including financing.

10 SEC (2003) 414, 28 March 2003: "Commission staff working paper on actions to combat the financing of terrorism".

11 E.g. arms trafficking, drugs trafficking, diamond trafficking and counterfeiting and piracy of goods.

among other things, cases where terrorist organisations obtain financial support from legitimate sources, for instance through charitable or other legal bodies.

When seeking financing, terrorist organisations often also use methods similar to those of criminal organisations such as extortion, kidnapping with ransom demands and all kinds of trafficking and fraud. Like criminal organisations, they may practice corruption and money-laundering.

The mobilisation of States against terrorism and public awareness of the fight against terrorism should dry up the "legal" sources of terrorist financing[12], so that terrorist groups will be tempted to seek financing more and more through the means commonly deployed by ordinary criminal organisations.

Consequently, if the fight against terrorism is to be totally effective, it must be handled in conjunction with the fight against other forms of crime.

Since the facilities available for combating organised crime can be used to combat terrorism alongside the specific measures taken for that purpose, the Union must equip itself with a high-performance arsenal to combat organised crime.

(b) The Joint Action on making it a criminal offence to participate in a criminal organisation in the Member States of the European Union, adopted by the Council on 21 December 1998, needs reviewing.

The concept of criminal organisation was introduced by Joint Action 1998/733/JHA on making it a criminal offence to participate in a criminal organisation, adopted by the Council on 21 December 1998[13].

This concerns not only organised crime but also terrorist organisations, since it applies to the categories of offence referred to in Article 2 of the Europol Convention, which extends to preventing and combating terrorism[14].

But a number of factors have changed since 1998:

– The Amsterdam Treaty introduced new instruments, more effective than the Joint Action; the Framework Decision is now the proper instrument for approximating criminal law in the Union;

– The United Nations Convention against transnational organised crime (the "Palermo Convention")[15] sets out the offences that are related to membership of an organised criminal group;

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12 Financing of terrorist groups can include income from legitimate sources: charitable fund-raising is one means of financing terrorism. But a terrorist group can also use the proceeds of criminal activity, like criminal organisations.

13 OJ L 351, 29.12.1998, p.1. A criminal organisation is defined as "*a structured association, established over a period of time, of more than two persons, acting in concert with a view to committing offences which are punishable by deprivation of liberty or a detention order of a maximum of at least four years or a more serious penalty, whether such offences are an end in themselves or a means of obtaining material benefits and, where appropriate, of improperly influencing the operation of public authorities*".

14 Council Act of 26 July 1995 drawing up the Convention based on Article K.3 of the Treaty on European Union, on the establishment of a European Police Office (Europol Convention): OJ C 316, 27.11.1995, p.1.

– Framework Decision 2002/475/JHA of 13 June 2002 on combating terrorism[16] is a major reference. It defines a "terrorist group" on the basis of the definition of "criminal organisation" in Joint Action 1998/733/JHA, but it is a much fuller instrument[17].

The Commission considers that Joint Action 1998/733/JHA should be revised to:

– actually harmonise the definition of offences and penalties as regards individuals and bodies corporate;

– provide for a specific offence of "directing a criminal organisation";

– determine specific aggravating circumstances (commission of an offence in conjunction with a criminal organisation) and mitigating circumstances (reduced penalties for those who assist the police with their inquiries);

– include provisions to facilitate cooperation between judicial authorities and coordinate their action.

Reformatting the Joint Action on membership of a criminal organisation into a Framework Decision will make it possible to bring the fight against criminal groups into parallel, whether they are terrorist organisations or organised crime. It is a necessary step on the way to tougher action against organised crime as such. And it will contribute to the fight against terrorism and the financing of terrorism, in particular:

– where the group's terrorist motives have not yet become visible;

– where the group commits criminal offences, in particular to obtain sources of finance, without it being possible to charge it with terrorist offences at that stage;

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15 United Nations Convention against transnational organised crime adopted by Resolution A/RES/55/25 of 15 November 2000 at the 55th UN General Assembly. The 40th instrument of ratification was deposited with the Secretariat-General of the United Nations on 1 July 2003; Article 38 accordingly came into force on 29 September 2003.

16 OJ L 164, 26.6.2002, p. 3.

17 Framework Decision 2002/475/JHA creates offences of directing a terrorist group and of different forms of participation in the activities of a terrorist group (by supplying information or material resources, or by funding its activities in any way, with knowledge of the fact that such participation will contribute to the criminal activities of the terrorist group), and provides also for inciting, aiding or abetting, and in most cases attempting these offences. Regarding penalties, it introduces a principle of "aggravating circumstance" by providing that "terrorist offences" and certain offences linked to terrorism must be punishable by custodial sentences heavier than those imposable under national law for such offences in the absence of a terrorist intent, it sets the minimum level of the maximum penalty at 15 years for directing a terrorist group and 8 years for participation in a terrorist group, it enumerates a series of penalties that can be imposed on bodies corporate (in particular exclusion from entitlement to public benefits or aid, temporary or permanent disqualification from the practice of commercial activities, placing under judicial supervision, judicial winding-up order and closure of establishments), it provides for a system of "repentis" by providing for specific circumstances in which Member States may reduce prison sentences where the terrorist renounces terrorist activity or provides the administrative or judicial authorities with information. And it establishes rules of jurisdiction, provides for coordination between Member States and the centralisation of prosecutions.

– in the case of links, or even confusion, between terrorist organisations and organised criminal groups (use of terrorist methods by criminal groups, as terrorist organisations drift into Mafia-type techniques).

The Union legislation on criminal organisations must therefore be toughened and made consistent with Union legislation on the fight against terrorism: a Framework Decision to supersede Joint Action 1998/733/JHA will be a major step forward in the fight against the most serious forms of crime. This will also be the most effective way of tackling the overall terrorist phenomenon.

The Commission is planning to make a proposal in 2004.

4. AN ELECTRONIC LIST OF PERSONS, GROUPS AND ENTITIES TO WHOM RESTRICTIVE MEASURES TAKEN TO FIGHT TERRORISM APPLY OR UNDER INVESTIGATION FOR CRIMINAL OFFENCES SHOULD BE DRAWN UP.

Freezing the funds or other financial assets and economic resources of individuals, groups and entities involved in terrorism is one of the mechanisms that exist in the Union to combat terrorism[18].

Lists have accordingly been drawn up. They are regularly updated and published in the Official Journal.

A large number of individuals and organisations, whose names have been published in the Official Journal of the European Union, need to be kept under close surveillance, particularly in their banking business, as they are subject to financial restrictions.

To be fully effective, freezing of assets must apply in the most appropriate manner as soon as the person or entity is entered on the list. These measures must operate urgently as precautionary measures.

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[18] Council Common Position 2001/931/CFSP of 27 December 2001 provides for the freezing of the funds and other financial assets or economic resources of persons, groups and entities involved in acts of terrorism and a prohibition on providing them with financial services. They are listed in the Annex. The list is regularly updated by new common positions amending the original Annex. Council Regulation (EC) No 2580/2001 of 27 December 2001 is on specific restrictive measures directed against certain persons and entities with a view to combating terrorism. It implements the freezing of the funds and other financial assets or economic resources of the listed persons, groups and entities and the prohibition on providing them with financial services. The list is regularly amended and updated. It concerns natural and legal persons, groups and entities that commit or attempt to commit an act of terrorism, participate in or facilitate such an act. The Regulation is implemented by Decisions publishing lists in the Official Journal. And Council Common Position 2002/402/CFSP of 27 May 2002 concerns measures against Usama bin Laden, members of the Al-Qaida organisation and the Taliban and other individuals, groups, undertakings and entities associated with them. It provides for the Community to order the freezing of the funds and other financial assets or economic resources of the individuals, groups, undertakings and entities on the list drawn up pursuant to UNSCR 1267(1999) and 1333(2000) which is updated regularly by the Committee established pursuant to UNSCR 1267(1999). Council Regulation (EC) No 881/2002 of 27 May 2002 provides for measures against the same persons and entities. It provides in particular that all funds and economic resources belonging to, or owned or held by, a natural or legal person, group or entity designated by the Sanctions Committee and listed in Annex I shall be frozen. The list has been updated by a succession of Regulations.

European banking organisations grouping the European Banking Federation (FBE), the European Savings Bank Group (ESBG), the European Association of Cooperative Banks and the European Association of Public Banks (EAPB) have set up a group of experts to draw up a consolidated electronic list meeting the banks' needs.

This initiative is based on the fact that the only source currently available is in the form of the lists of individuals and entities subject to sanctions that are published from time to time in the Official Journal.

These organisations consider that a consolidated electronic list permanently updated and accessible to the banks would enhance the effectiveness of the scheme as the data on individuals and entities subject to sanctions could be processed more quickly.

The bodies responsible for preventing and combating terrorism could then enjoy the benefit of a measure that seeks to set up a database or a consolidated electronic list combining the information published in the Official Journal and information on persons, groups and bodies under criminal investigation for terrorist offences. Europol and other bodies fighting against terrorism in the Union could save time and enhance their efficiency.

The Commission welcomes the involvement of the private sector here.

It will have practicable solutions for improving the current system evaluated, and in 2004 the question will be on the agenda at the Forum on the Prevention of Organised Crime for discussion with those involved on the ground, including representatives of the private sector.

5. THE ESTABLISHMENT OF AN EFFICIENT SYSTEM FOR REGISTERING BANK ACCOUNTS IN THE MEMBER STATES ALLOWING A RAPID RESPONSE TO REQUESTS FOR JUDICIAL ASSISTANCE ON BANK ACCOUNTS AND MOVEMENTS OF FUNDS SHOULD BE LAUNCHED.

The difficulties encountered in police and judicial cooperation on financial crime are due partly to the difficulty of successfully investigating bank accounts and movements of funds. Consequently the establishment of means of identifying the true ownership of bank accounts and of centralising accounts could help in improving the traceability of capital movements in the context of criminal investigations, in particular regarding the financing of terrorism and money-laundering[19].

The Protocol to the Convention on mutual judicial assistance in criminal matters between the Member States of the European Union, established by Council Act on 16 October 2001, already contains provisions relating to requests for information on

[19] Certain Member States have established a system of centralisation of bank accounts. In France, there is the "Fichier des comptes bancaires et assimilés" (FICOBA). Set up in the early 1970s, it has been computerised since 1982 and currently records about 270 million accounts. It is fed by compulsory declarations from financial establishments, which are obliged to declare accounts they manage and to supply certain information about them. The data file is consulted by the tax departments and the judicial authorities. It is also used in judicial cooperation to answer requests for judicial assistance from foreign authorities to French judicial authorities.

bank accounts and on banking transactions and requests for monitoring of banking transactions[20]. But requests for judicial assistance can be met satisfactorily only if the Member States set up an efficient system for registering bank accounts allowing a rapid response to requests for judicial assistance on bank accounts and movements of funds.

The establishment of national systems for registering bank and similar accounts allowing the true owners to be identified in each Member State would be a valuable tool in the fight against terrorism and organised financial crime.

Such systems would have to be accessible to law-enforcement agencies and the judicial authorities.

The question of establishing such systems is already being considered in the context of the preparation of a proposal for a third directive on money-laundering. In 2004 the Commission will pursue its review of existing arrangements in the Union to determine whether there is a need for a legal instrument to set up an efficient system for registering bank accounts allowing holders to be identified and facilitating investigations into bank accounts and movements of funds.

6. A MECHANISM MUST BE DEVISED ALLOWING INFORMATION TO BE GATHERED AND TRANSMITTED TO AVOID TERRORIST GROUPS INFILTRATING LEGITIMATE ACTIVITIES.

It frequently happens that legitimate entities are used to serve the needs of terrorist groups, particularly their financial needs. Likewise organised criminal groups infiltrate legitimate activities for money-laundering purposes.

Improvement in the transparency of bodies corporate and charitable organisations will help to prevent and combat both organised crime and terrorism more effectively.

Recommendation No 3 in the Strategy of the European Union for the next Millennium[21] reads: *"Member States shall seek to collect information, in compliance with the relevant rules relating to data protection, on physical persons involved in the creation and direction of legal persons registered in the territory of Member States, as a means to prevent the penetration of organised crime in the public and legitimate private sector. A study shall be made of how such data can be systematically compiled and analysed and be available for exchange with other Member States and, where appropriate, with bodies responsible at European Union level for the fight against organised crime, on the basis of appropriate rules to be developed by the Council."*[22]

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20 OJ C 326, 21.11.2001 p. 1.

21 OJ C 124, 3.5.2000 p.1.

22 These terms are taken from recommendation 8 of the programme of action on organised crime adopted by the Council on 28 April 1997 which ought to have been implemented by the end of 1998. The 1997 programme of action was fuller on this point since it referred not only to information on natural persons participating in the formation or management of such legal persons but also natural persons participating in the financing of legal persons.

In the same spirit, paragraph 54 of the conclusions of the Tampere European Council of 15 and 16 October 1999 considered that the transparency of ownership of corporate entities should be improved, subject to data-protection rules.

A Commission staff working paper on the measures and steps taken with regard to the implementation of the recommendations in the European Union Strategy for the Beginning of the New Millennium on Prevention and Control of Organised Crime calls for the extension of this measure, originally designed to help combat organised crime, to the financing of terrorism[23].

At the same time the Commission has had a comparative study done on existing measures in the Member States to prevent organised crime and terrorist groups from infiltrating legitimate entities[24].

It was found that most Member States keep registers of companies recording a variety of items of information, such as the corporate name and legal form, the registered office or place of establishment and the names of managerial officers. These registers are held either by public authorities reporting to the Ministry of Justice, the Ministry of Trade and Industry or the courts, or by semi-public bodies such as chambers of commerce. The average annual number of entries in the Member States is estimated at more than 4 000 000. The annual number of deletions is estimated at 1 000 000 or so.

To ensure effective prevention against infiltration of the legitimate sector, the study recommends that all Member State should incorporate in their legislation on the formation and management of bodies corporate mechanisms for the disqualification of individuals or firms convicted of offences related to terrorism or organised crime.

The scheme could be fully effective if the relevant persons were prohibited from directing, managing, administering or directly or indirectly controlling a body corporate and the prohibition applied throughout the Union.

This would presuppose:

– the existence of reliable national registers of bodies corporate – both companies and firms and charitable organisations. Such registers should make it possible to identify the true owners of a company or firm. Common standards could be determined to harmonise the data in the registers and make it easier for national services preventing and combating certain forms of crime, in particular terrorism, to consult them. That would facilitate investigations and boost the effectiveness of police and judicial cooperation;

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23 SEC (2003) 378, 21.3.2003, produced in accordance with Recommendation 39 in "the European Union Strategy for the Beginning of the New Millennium on Prevention and Control of Organised Crime" (OJ C 124, 3.5.2000, p.1). It was examined by the par le Multidisciplinary Group on organised crime (GMD), which produced the document "CRIMORG 36" of 2 June 2003 entitled "Draft report on the measures and steps taken with regard to the implementation of the recommendations of the European Union Strategy for the Beginning of the New Millennium on Prevention and Control of Organised Crime".

24 Study No DG.JAI-B2/2003/01 done by IALS (Institute of Advanced Legal Studies) in 2003 under the direction of Constantin Stefanou and Helen Xanthaki.

– the introduction of mechanisms whereby persons convicted of offences related to terrorism or organised crime would be disqualified throughout the Union from forming, managing and directing bodies corporate;

– the establishment of an information exchange mechanism to check whether persons who have been convicted of offences related to terrorism or organised crime are attempting to participate in forming or managing a body corporate and apply the disqualification ordered against them[25].

The implementation of Recommendation 3 in the European Union Strategy for the Beginning of the New Millennium on Prevention and Control of Organised Crime is thus a large-scale project.

The Commission considers that it is essential to bring in measures to improve the transparency of bodies corporate in order to counter the infiltration of the legitimate sector by criminal groups and terrorist organisations.

These measures should be devised in close cooperation with representatives of the relevant sectors. It is necessary to ensure that greater transparency regarding the managers, shareholders and true owners of companies does not have a negative effect in terms of loss of efficiency and increased overheads, as a balance must be struck between the interests at stake and the proportionality of the means deployed.

In 2004 the Commission will organise a debate with relevant representatives of the Member States on the feasibility, practical arrangements, cost-effectiveness and time needed if a scheme that is appropriate, balanced, proportionate and compatible with fundamental rights, in particular data protection, is to be put in place. It is planning to address this issue in the Forum on Organised Crime Prevention.

7. THE ESTABLISHMENT OF A EUROPEAN CRIMINAL RECORD SHOULD ALSO BE ENVISAGED AS A CONTRIBUTION TO THE EFFECTIVENESS OF THE FIGHT AGAINST CRIME, AND IN PARTICULAR TERRORISM.

Effectively combating the most serious forms of crime, in particular terrorism, needs exchanges of information on convictions, if only to enforce certain forms of disqualification ordered to be applied throughout the European Union and measures confiscating the convicted person's property or assets.

This applies likewise to preventing and combating organised crime: the exclusion of persons who have committed certain offences from public procurement procedures in the Member States and the Community and the rejection of their applications for public grants or licences will be nugatory in the absence of Union-wide distribution of information on them[26].

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25 See the considerations about the European criminal record in Chapter 7 of this Communication.

26 Recommendation 7 of the 1997 plan of action on organised crime provides for disqualifying people convicted of offences related to organised crime from pubic tendering procedures in the Member States and the Community and rejecting their applications for grants and licences. Recommendation 2 in the European Union strategy for the new millennium takes up the same idea.

The establishment of an effective mechanism for transmitting information on convictions and disqualifications is one of the pivots of a general scheme for gathering and transmitting information to prevent terrorist groups and criminal organisations from infiltrating legitimate activities.

The process of introducing a European criminal record containing convictions in Europe was envisaged in the Commission Communication on the mutual recognition of final judgments in criminal matters[27] and in measures 2 to 4 of the Council and Commission programme of measures to give effect to the principle of mutual recognition of decisions in criminal matters[28, 29].

Two studies have been done under this programme[30], financed from programmes managed by the Commission, and the Commission recently ordered another study[31]. They explore many of the questions raised by the establishment of a European register of convictions.

The Member States keep national registers of convictions, but there are major differences in the departments holding them, the content and the rules governing access.

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27 COM (2000) 495 final, 26.7.2000, section 5.

28 OJ C 12, 15.1.2001, p.10.

29 Measure 2 concerns the adoption of "one or more instruments establishing the principle that a court in one Member State must be able to take account of final criminal judgments rendered by the courts in other Member States for the purposes of assessing the offender's criminal record and establishing whether he has reoffended, and in order to determine the type of sentence applicable and the arrangements for enforcing it." As regards taking account of foreign convictions as envisaged by the above measure, the situation varies widely from one Member State to another. Article 56 of the Council of Europe Convention on the international validity of criminal judgments of 1970 provides: "Each Contracting State shall legislate as it deems appropriate to enable its courts when rendering a judgment to take into consideration any previous European criminal judgment rendered for another offence after a hearing of the accused with a view to attaching to this judgment all or some of the effects which its law attaches to judgments rendered in its territory. It shall determine the conditions in which this judgment is taken into consideration". But only four Member States have ratified the Convention (Austria, Denmark, Spain and Sweden) without entering reservations on the application de Article 56. Measure 3 reads: "*In order to facilitate the exchange of information, a standard form like that drawn up for the Schengen bodies, translated into all the official Union languages, should be introduced for criminal records applications".* As regards this standard form for criminal records applications, the Commission has concluded that its should be combined with the model in the proposal for a Framework Decision on the European Evidence Warrant for obtaining objects, documents and data for use in proceedings in criminal matters. Under this proposal, existing judicial assistance procedures for obtaining criminal records would be replaced by a warrant issued by a judicial authority and enforced in accordance with the mutual recognition principle. Measure 4 reads: "*A feasibility study should be carried out to determine how best to ensure, while taking full account of requirements relating to personal freedoms and data protection, that the competent authorities in the European Union are informed of an individual's criminal convictions. Such a study should cover, in particular, the types of conviction that should be concerned and consider which of the following would be the best method: (a) to facilitate bilateral information exchanges; (b) to network national criminal records offices; or (c) to establish a genuine European central criminal records office* ".

30 "Blueprint for an EU criminal records database: Legal, politico-institutional & practical feasibility" (Prof. Gert Vermeulen and Prof. Tom Vander Beken, Ghent University; Grotius project 2001/GRP/024). "A European Criminal Record as a means of combating organised crime" (coordinated by par Dr Helen Xanthaki, IALS, London; Falcone project 2000/FAL/168).

31 Study DG.JAI-B2/2003/01 done by IALS (Institute of Advanced Legal Studies) in 2003 under the direction of Constantin Stefanou and Helen Xanthaki.

In certain Member States the registers are held by the police, whereas in others they are at the Ministry of Justice.

There are differences in the types of convictions and disqualifications entered in the national registers. Not all Member States record convictions of bodies corporate and not all Member States record convictions of their nationals in foreign courts.

There are also major differences in the rules relating to the removal of entries from the register.

The rules in the ten acceding States are just as diverse.

Moreover, in the current situation, mutual judicial assistance is needed for the transmission of information on convictions.

A European register of convictions and disqualifications would have the advantage of making it unnecessary to use this procedure and would save much time, though a number of practical and legal problems must first be solved.

Before embarking on this exercise, it is necessary to determine clearly what purposes the register is to serve.

The programme of measures mentioned above identifies two types of use: identifying repeat offenders and drawing the conclusions for sentencing purposes (section 1.2 of the programme), and extending the effectiveness of penalties throughout the Union (section 3.4).

Other uses are conceivable: it would allow the court to apply the "*non bis in idem*" principle where the accused has already been convicted of the same offence in another Member State, and it could also help to prevent terrorist groups and organised crime from infiltrating the legitimate public and private sectors.

It will have to be decided whether the register should provide information for investigations undertaken by criminal investigation services (which are police forces or judicial authorities, depending on the country and the type of investigation) or even for investigations undertaken by administrative authorities responsible for controlling access to certain activities (such as work with children, or public tendering) from which convicted persons are disqualified.

The study on measures in the Member States to prevent organised crime and terrorist groups from infiltrating legitimate entities recommends that a European Register of Convictions and Disqualifications be established for individuals and bodies corporate convicted of organised crime or terrorism offences (Recommendation 7).

The study recommends direct access for public authorities responsible for registering information on bodies corporate so as to prevent them from being infiltrated by terrorism and organised crime (Recommendation 14). It adds that such a Register must be accessible to the judicial and prosecuting authorities, the police and public bodies responsible for keeping companies registers[32].

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[32] Study DG.JAI-B2/2003/01 done by IALS (Institute of Advanced Legal Studies) in 2003 under the direction of Constantin Stefanou and Helen Xanthaki.

And to control access to certain occupations, it must be decided whether there should be a possibility of applying for a certificate that an individual is not on the register.

In the light of the foregoing, the discussion on the establishment of a European criminal record must deal at the very least with the following questions:

- *Data protection*. It will be necessary to determine how the data in the registers are to be protected. There will have to be precise provisions governing access to the data by the person concerned, the right to correct them and supervision by a control body.

- *Access*. It will be necessary to determine who has access, for what purposes and on what conditions. In particular it will have to be decided whether not only the judicial authorities but also the police and administrative authorities should have the possibility of direct or indirect access. And the question of access for Eurojust, Europol and OLAF will arise.

- *Content*. Given the objectives pursued, it will have to be decided what convictions should be entered in the European register: are all convictions and disqualifications to be recorded or only some of them, those relating to particularly serious offences (such as terrorism and organised crime). And there is the question of the inclusion of bodies corporate and the rules to be applied to them.

- *Removal of data*. The easiest solution would be to leave it up to each Member State to apply its own rules to the deletion of a record of a conviction.

- *Organisation*. A European register should be accessible electronically in real time if it is to be quick and effective. But the centralised register does not necessarily imply a central computer storing all the data, as setting up links with national registers could well suffice. The question of responsibility for data input and updating would then arise. Whatever solution is selected, it will be necessary to determine what body is best placed to manage the register at European level. The studies referred to above raise a number of possibilities, including Europol and Eurojust. The controls of the operation of the register will also have to be considered.

- *Financing*. The question of financing the costs of establishing and operating a register is obviously a vital one.

On the basis of the main questions relating to the establishment of a European register of convictions and disqualifications, the Commission will shortly be consulting with the Member States with a view to producing a proposal for legislation to establish such a register before the end of 2004.

8. THE EXCHANGE OF INFORMATION BETWEEN THE MEMBER STATES AND THE UNION BODIES RESPONSIBLE FOR COMBATING TERRORISM MUST BE TOTAL.

Without awaiting the establishment of a European Register of convictions and disqualifications, which will require detailed analysis over a lengthy period, steps

must be taken to improve the exchange of information between the Member States and the bodies responsible for combating terrorism in the European Union.

Council Decision 2003/48/JHA of 19 December 2002 on the implementation of specific measures for police and judicial cooperation to combat terrorism is already a major step forward.

It was adopted on the basis of an initiative of the Kingdom of Spain and helps to improve exchanges of information on criminal investigations and proceedings concerning the "persons, groups or entities" listed in the Annex to Council Common Position 2001/931/CFSP of 27 December 2001.

But more must be done to extend the scope of these information exchanges to all terrorist offences within the meaning of Framework Decision 2002/475/JHA, without them being confined to those listed in the Annex to Common Position 2001/931/CFSP.

The obligation to provide information would not be defined by reference to a list of persons and entities, however broad, but to all the offences defined by Framework Decision 2002/475/JHA on combating terrorism with which the Member States are acquainted: terrorist offences, offences relating to a terrorist group, including all forms of financing for its activities, offences linked to terrorist activities and incitement, complicity and attempts.

These exchanges of information should concern all the stages of the procedure, including criminal convictions, whereas Decision 2003/48/JHA applies only to convictions.

The information – concerning investigations, prosecutions and convictions for terrorist offences – should be sent to Europol and Eurojust.

It should provide input for ongoing investigations and all useful links and comparisons with current proceedings should be made.

A proposal for a Decision is attached to this Communication.

9. CONCLUSION

Greater efforts must be made in the fight against terrorism and the most serious forms of crime. A qualitative and quantitative improvement in exchanges of information is needed. At the same time, regard must be had for fundamental rights, and particularly data protection, and the practicability of measures.

The Commission proposes a step-by-step approach:

– 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, including information on convictions. The Commission is accordingly presenting the attached proposal for a Decision.

– The Union legislation on criminal organisations must be toughened and made consistent with the Union legislation on the fight against terrorism. Before the

end of 2004 the Commission will prepare a Framework Decision to replace the Joint Action of 1998.

– In 2004 the Commission will launch work in the Forum on Organised Crime Prevention for the establishment of a database or a consolidated computerised list of persons, groups and entities covered by restrictive measures for the fight against terrorism or under criminal proceedings for terrorist offences. This work will be undertaken in partnership with the private sector and in liaison with Europol.

– In 2004 the Commission will have a study done on existing arrangements in the Union to determine whether there is a need for a European legal instrument to require the Member States to have national systems for registering bank accounts allowing holders to be identified and facilitating investigations into bank accounts and movements of funds.

– The Commission regards measures to improve the transparency of bodies corporate as indispensable to counter infiltration of the legitimate sector by criminal groups and terrorist organisations. Such measures must be prepared in close cooperation with representatives of the relevant sectors. In 2004 the Commission will organise a debate with relevant representatives of the Member States on the feasibility, practical arrangements, cost-effectiveness and time needed if a scheme that is appropriate, balanced, proportionate and compatible with fundamental rights, in particular data protection, is to be put in place. It is planning to address this issue in the Forum on Organised Crime Prevention.

– The Commission considers that the establishment of an effective mechanism for exchanging information on convictions and disqualifications is one means of preventing terrorist groups and criminal organisations from infiltrating legitimate activities. The main questions relating to the establishment of a European register of convictions and disqualifications have been identified. The Commission will continue analysing this horizontal issue and will seek out the most appropriate solutions before presenting a proposal for the establishment of a register. It will sound out the Member States on the basis of a questionnaire in 2004.

Proposal for a

COUNCIL DECISION

on the exchange of information and cooperation concerning terrorist offences

EXPLANATORY MEMORANDUM

INTRODUCTION

The purpose of this Decision is to improve the effectiveness of activities to prevent and combat terrorism and to boost cooperation between the Member States' authorities responsible for combating terrorism, Europol and Eurojust.

In particular the point is to broaden the exchanges of information on convictions for terrorist offences.

A European Register of convictions and disqualifications was envisaged in the programme of measures to implement the principle of mutual recognition of criminal judgments.

The idea was also developed in the Commission Communication on measures to be taken to combat terrorism and other forms of serious crime, in particular to improve exchanges of information.

However, without awaiting the establishment of the Register, which needs thorough analysis and will take time, rapid progress must be made towards improving the exchange of information between the Member States and the European Union bodies responsible for combating terrorism.

It is essential in combating terrorism for the Member States to routinely transmit to the relevant European Union bodies information on all persons investigated, prosecuted or convicted for acts of terrorism and to exchange information in this respect.

Council Decision 2003/48/JHA of 19 December 2002 on the implementation of specific measures for police and judicial cooperation to combat terrorism is a major step forward for the exchange of information at the time of ongoing criminal proceedings, particularly at the investigation stage.

The Decision, adopted on the basis of an initiative by the Kingdom of Spain, helps to improve exchanges of information on criminal investigations and proceedings concerning the "persons, groups or entities" listed in the Annex to Council Common Position 2001/931/CFSP of 27 December 2001.

The persistence of the terrorist threat and the complexity of the phenomenon raise a need for greater effectiveness. More must be done to extend the scope of these information exchanges to all terrorist offences within the meaning of Framework Decision 2002/475/JHA, without them being confined to those listed in the Annex to Common Position 2001/931/CFSP.

These exchanges of information should concern all the stages of the procedure, including criminal convictions;

The information – concerning investigations, prosecutions and convictions for terrorist offences – should be sent to Europol and Eurojust.

Under Article 8 of the Convention on the establishment of a European Police Office, Europol can enter data relating to convictions in its information system.

Article 8(1)(1) of the Europol Convention allows data on persons convicted of an offence within Europol's jurisdiction to be entered in the Europol Information System.

Article 8(3)(5) allows information on the conviction of such persons for offences within Europol's jurisdiction to be stored in the Europol Information System.

Such information can also be processed in working files held by Europol for analysis purposes in the performance of its tasks. And Europol can supply information on convictions to the Member States.

This information is optional, and in practice Europol receives very little information on convictions.

It is therefore important for the Member States to take the necessary measures to ensure that the appropriate authorities routinely supply Europol with at least the basic information it needs on convictions for terrorist offences within the meaning of the Framework Decision of 13 June 2002 on combating terrorism.

As regards Eurojust, Article 9(4) of the Council Decision of 28 February 2002 establishing it provides: "In order to meet Eurojust's objectives, the national member shall have access to the information contained in the national criminal records or in any other register of his Member State in the same way as stipulated by his national law in the case of a prosecutor, judge or police officer of equivalent competence."

It is also important here for the Member States to take the necessary measures to ensure that the relevant authorities actually and automatically send Eurojust information on terrorist offences, including convictions and the offenders' criminal records.

Council Decision 2003/48/JHA of 19 December 2002 on the implementation of specific measures for police and judicial cooperation to combat terrorism in accordance with Article 4 of Common Position 2001/931/CFSP will be repealed and replaced by this Decision.

ARTICLE-BY-ARTICLE COMMENTARY

Preamble

Recitals 1 and 2 restate the Council's determination to combat terrorism. They take over recitals 1 and 4 of Council Decision 2003/48/JHA of 19 December 2002 on the implementation of specific measures for police and judicial cooperation to combat terrorism.

Recital 3 states that 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, including information on convictions. The Member States' specialised national services, the judicial authorities and relevant European Union bodies such as Europol and Eurojust have a vital need for information if they are to perform their tasks.

Recital 4 defines the objective of the Decision, with an express reference to Decision 2003/48/JHA of 19 December 2002, adopted on the basis of an initiative of the Kingdom of Spain, the scope of which 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.

Recital 5 states that the Decision is in conformity with the rules on subsidiarity and proportionality.

The final recital states that the Decision respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union.

Article 1

Article 1 is devoted to definitions of the main concepts used in the Decision: most of them refer to other European Union instruments.

“Terrorist offences”, for instance, are the offences specified in Articles 1 to 3 of Council Framework Decision 2002/475/JHA of 13 June 2002 on combating terrorism, the “Europol convention" is the Convention of 26 July 1995 on the establishment of a European Police Office and the “Eurojust Decision” is the Council Decision 2002/187/JHA of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime.

The concept of “group or entity" has been defined in a specific way for this Decision to reflect the fact that it is broader in scope than 2003/48/JHA. It accordingly includes:

– "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.

There is not necessarily a total correlation between the two concepts. It has therefore been felt preferable to refer to the two instruments so as to broaden the scope of the terrorism information exchanges as far as possible.

Article 2

Article 2 is the main provision of the Decision, since it governs information exchanges on terrorist offences.

It is in six paragraphs.

Paragraph 1 takes over Article 2(1) of Decision 2003/48/JHA but drops the phrase "involving any of the listed persons, groups or entities" so as to extend the scope of the information exchanges to all terrorist offences. It takes over the principle that each Member State must designate a specialised service within its police services to receive all relevant information concerning terrorist offences.

Paragraph 2 corresponds to Article 3(1) of Decision 2003/48/JHA. It takes the same principle of the designation of an appropriate judicial or other competent authority that has access to and can collect all relevant information concerning criminal proceedings conducted under the responsibility of the judicial authorities. But its scope is extended to include convictions. And provision is made for a single authority to be designated in each Member State, whereas Decision 2003/48/JHA allowed several authorities to be designated where the Member State’s legal system so provides.

The effectiveness of the information collection and transmission system depends on simplicity and centralisation: each Member State must have a single police service and judicial authority for information exchanges.

Paragraph 3 requires each Member State to take the necessary measures to ensure that at least the information referred to in paragraph 4 is transmitted to:

- Europol, in accordance with national law and where the provisions of the Europol Convention so allow, for processing in accordance with Article 10 of that Convention, and in particular paragraph 6; and

- 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.

Paragraph 4 lists the information to be transmitted. The list is based on Articles 2 and 3 of Decision 2003/48/JHA, but it has been amplified to reflect the broader scope of this Decision and to ensure that Europol and Eurojust receive the fullest possible information.

Europol and Eurojust must be sent all relevant information that is available on terrorism so that they can perform their tasks in the best possible conditions.

References to convictions have been added to the lists in Articles 2(2) and 3(2) of Decision 2003/48/JHA: terrorist offences for which a person has been convicted, sentenced or disqualified and criminal record.

The common list for Europol and Eurojust now contains the following:

- data which identify the person, group or entity;

- acts under investigation and their specific circumstances;

- the offence concerned;

- links with other relevant cases of terrorist offences;

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

- terrorist offences of which the person has already been convicted and the specific circumstances surrounding them;

- penalties imposed and information regarding their enforcement;

- disqualifications ordered by reason of the conviction;

- prior criminal record.

Only the information provided for by paragraph 5 is reserved solely for Europol. This information, which corresponds to points (c) and (d) of Article 2 of Decision 2003/48/JHA, will be of no use to Eurojust (information relating to the use of communication technologies and the threat posed by the possession of weapons of mass destruction).

Paragraph 6 is taken over from Article 7 of Decision 2003/48/JHA, which will be repealed. It concerns information exchanges between Member States. The only difference concerns the scope, which is broader here. It is no longer confined to the listed persons, groups or entities (annex to common position 2001/931/CFSP). All terrorist offences are now concerned.

Each Member State must take the necessary measures to ensure that any relevant information included in a 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.

Article 3

Article 13 of the Convention on mutual judicial assistance in criminal matters between the Member States of the European Union (OJ C 197, 12.7.2000, p. 3) provides for joint investigation teams to be formed. Framework Decision 2002/465/JHA of 13 June 2002 on joint investigation teams determines the legal rules governing such teams, leaving it open to the Member States to decide whether to use them or not. But the Tampere European Council on 15 and 16 October 1999 asked for investigation teams to be set up without delay, initially to combat terrorism.

Decision 2003/48/JHA went a step further than the earlier instruments. Article 4 provides that "Member States shall, where appropriate, take the necessary measures to set up joint investigation teams in order to carry out criminal investigations into terrorist offences involving any of the listed persons, groups or entities."

Even if it goes beyond the information exchanges which are the main subject-matter of this Decision, the principle of that provision should be preserved, as it adds value over and above the basic instruments on joint investigation teams, which simply introduce the optional possibility of setting them up.

But the scope will be extended. It is no longer confined to the listed persons, groups or entities (annex to common position 2001/931/CFSP). All terrorist offences are now concerned.

And the expression "in appropriate cases" is used in place of "where appropriate" to clarify and strengthen the text.

Article 4

Article 4 concerns requests for mutual legal assistance and recognition and enforcement of judgments. It takes over Article 6 of Decision 2003/48/JHA. The scope is extended to cover all terrorist offences.

Article 5

Article 5 repeals Decision 2003/48/JHA. This is thought to be the best way of making the law easier to read. The new Decision takes over virtually all the provisions of Decision 2003/48/JHA but broadens the scope and reinforces some of them.

Article 5 of Decision 2003/48/JHA has not been taken over in the new Decision and must be regarded as repealed.

It has not been felt useful to take over Article 5 as the list of information items to be supplied to Europol and Eurojust has been unified, with the exception only of those in Article 2(5), which are not relevant to Eurojust.

Article 6

Article 6 governs the entry into force of the Decision.

2004/0069 (CNS)

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. The information exchanges must be extended in particular to penalties imposed for convictions for terrorism offences, to disqualifications ordered by reason of such convictions and to the criminal record.

(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.

(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[33];

(b) "Europol Convention": the Convention of 26 July 1995 on the establishment of a European Police Office[34];

(c) "Eurojust Decision": Council Decision 2002/187/JHA of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime[35];

(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, 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.

2. Each Member State shall designate a 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.

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

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33 OJ L 164, 22.6.2002, p.3.
34 OJ C 316, 27.11.1995, p.2.
35 OJ L 63, 6.3.2002, p.1.

– Europol, in accordance with national law and where the provisions of the Europol Convention so allow, for processing in accordance with Article 10 of that Convention, and in particular paragraph 6; and

– 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 is the following:

– data which identify the person, group or entity;

– acts under investigation and their specific circumstances;

– the offence concerned;

– links with other relevant cases of terrorist offences;

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

– terrorist offences of which the person has already been convicted and the specific circumstances surrounding them;

– penalties imposed and information regarding their enforcement;

– disqualifications ordered by reason of the conviction;

– prior criminal record.

5. The following information shall also be transmitted to Europol as provided by paragraph 2:

– the use of communication technologies;

– the threat posed by the possession of weapons of mass destruction.

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.

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 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,

For the Council
The President