

EUROPEAN PARLIAMENT

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20 November 1997

A4-0000/97



DRAFT REPORT

on the proposal for a Council Decision on a joint action establishing a programme of exchanges, training and cooperation for persons responsible for action to combat organised crime (Falcone programme) (COM(97)0528 - 11778/97 - C4-0572/97 - 97/0916(CNS))

Committee on Civil Liberties and Internal Affairs

Rapporteur: Mr Orlando

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By letter of 5 November 1997 the Council Presidency consulted Parliament, pursuant to Article K.6(2) of the Treaty on European Union, on the Commission proposal for a Council Decision on a joint action establishing a programme of exchanges, training and cooperation for persons responsible for action to combat organised crime (Falcone programme) (COM(97)0528 - 11778/97 - C4-0572/97 - 97/0916(CNS)).

At the sitting of 17 November 1997 the President of Parliament announced that he had referred this proposal to the Committee on Civil Liberties and Internal Affairs as the committee responsible and to the Committee on Legal Affairs and Citizens' Rights, the Committee on Budgets and the Committee on Budgetary Control for their opinions.

At its meeting of 15 September 1997 the Committee on Civil Liberties and Internal Affairs had appointed Mr Orlando rapporteur.

It considered the Commission proposal and the draft report at its meetings of 8-9 December 1997 and 20-21 January 1998.

At the latter/last meeting it adopted the draft legislative resolution by ... votes to ..., with ... abstention(s)/unanimously.

The following took part in the vote: d'Ancona, chairman, Wiebenga, vice-chairman, Orlando, rapporteur; Berger (for Elliott), ... (for ... pursuant to Rules 138(2)), ... and

The opinions of the Committee on Legal Affairs and Citizens' Rights, the Committee on Budgets and the Committee on Budgetary Control are attached.

The report was tabled on

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

A
LEGISLATIVE PROPOSAL

Proposal for a Council Decision on a joint action establishing a programme of exchanges, training and cooperation for persons responsible for action to combat organised crime (Falcone programme) (COM(97)0528 - 11778/97 - C4-0572/97 - 97/0916(CNS))

The proposal is approved with the following amendments:

Text proposed by the Commission⁽¹⁾

Amendments by Parliament

(Amendment 1)
Article 1(2)

2. For the purposes of this joint action, 'persons responsible for the fight against organized crime' means the following categories of persons inasmuch as they have responsibilities in the area concerned under their national legislation: judges, public prosecutors, police and customs departments, civil servants, public tax authorities, authorities responsible for the supervision of financial establishments and public procurement, including the fight against fraud and corruption, and representatives of professional circles who may be involved in the implementation of some of the recommendations in the action plan.

2. For the purposes of this joint action, 'persons responsible for the fight against organized crime' mean the following categories of persons inasmuch as they have responsibilities in the area concerned under their national legislation: judges, public prosecutors, police and customs departments, civil servants, public tax authorities, authorities responsible for the supervision of financial establishments and public procurement, including the fight against fraud and corruption, and representatives of professional circles who may be involved in the implementation of some of the recommendations in the action plan, or who may be able to help with the implementation of certain recommendations.

⁽¹⁾ OJ C

(Amendment 2)
Article 2, second indent

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|---|---|
| <p>- preparation of teaching modules for actions involving training, exchanges and training courses, <u>conferences</u> or seminars organized under this programme.</p> | <p>- preparation of teaching modules for actions involving training, exchanges and training courses or seminars organized under this programme.</p> |
|---|---|

(Amendment 3)
Article 3, second paragraph

Specific expert missions may be eligible in the framework of the implementation of the mechanism for the mutual assessment of national provisions relating to the fight against organized crime covered by the action plan on organized crime.

Specific expert missions should be eligible in the framework of the implementation of the mechanism for the mutual assessment of national provisions relating to the fight against organized crime covered by the action plan on organized crime.

(Amendment 4)
Article 5, opening clause

For feasibility studies and research, projects having the following aims may be eligible:

For feasibility studies and research, priority must be given to those specifically recommended in the action plan; in addition projects having the following aims may be eligible:

(Amendment 5)
Article 7(4)

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| <p>4. The projects may involve those responsible in applicant countries with a view to familiarising them with the European Union <i>acquis</i> in this field and to help them prepare for accession, or in other non-member countries where it serves the aims of the projects.</p> | <p>4. The projects may involve those responsible in applicant countries, <u>who must be invited for this purpose</u>, with a view to familiarising them with the European Union <i>acquis</i> in this field and to help them prepare for accession, or in other non-member countries where it serves the aims of the projects.</p> |
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(Amendment 6)
Article 8

Financing decisions and the contracts deriving from them shall provide in particular for follow-up and financial monitoring by the Commission and audit by the Court of Auditors.

Financing decisions and the contracts deriving from them shall provide in particular for follow-up and financial monitoring by the Commission and audit by the Court of Auditors, the results of which shall be forwarded to the budgetary authority.

(Amendment 7)
Article 9(1)

1. All types of expenditure directly attributable to implementation of a project and incurred during a contractually set period shall be eligible.

1. All types of expenditure directly attributable to implementation of a project and incurred during a contractually set period shall be eligible, within the limits of the appropriations approved in the context of the annual budgetary procedure:

(Amendment 8)
Article 11(3) (new)

3. The Commission shall immediately forward the annual programme, once adopted, to the European Parliament and shall keep the committee continually informed of the views of the European Parliament.

(Amendment 9)
Article 14(1)

1. The Commission is required to organize an evaluation programme carried out by neutral experts outside the programme.

1. The Commission is required to organize an evaluation programme carried out by neutral experts outside the programme. The details of the selection of experts shall be set out in the annual programme.

(Amendment 10)
Article 14(3) (new)

3. The European Parliament may make comments on this report, and the Commission must take them into account as far as possible in its next draft annual report.

(Amendment 11)
Article 15

This joint action shall enter into force on the day of its adoption.
It shall be applicable for a period of five years, at the end of which it may be extended.
It shall be published in the Official Journal.

This joint action shall enter into force on the day of its adoption.
It shall be applicable for a period of five years. The Commission may, after examination and evaluation of the details, issue a proposal for the extension of this joint measure (if necessary in amended form). The Council shall decide on this proposal after consulting the European Parliament.
It shall be published in the Official Journal.

DRAFT LEGISLATIVE RESOLUTION

Legislative resolution embodying Parliament's opinion on the proposal for a Council Decision on a joint action establishing a programme of exchanges, training and cooperation for persons responsible for action to combat organised crime (Falcone programme) (COM(97)0528 - 11778/97 - C4-0572/97 - 97/0916(CNS))

(Consultation procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to the Council, COM(97)0528 - 97/0916(CNS)⁽¹⁾,
 - having been consulted by the Council pursuant to Article K.6(2) of the Treaty on European Union (11778/97 - C4-0572/97),
 - having regard to Rule 58 of its Rules of Procedure,
 - having regard to the report of the Committee on Civil Liberties and Internal Affairs and the opinion(s) of the Committee on (and the Committee on ...) (A4-0000/97),
1. Approves the Commission proposal, subject to Parliament's amendments;
 2. Calls on the Commission to alter its proposal accordingly;
 3. Calls on the Council to notify Parliament should it intend to depart from the text approved by Parliament;
 4. Asks to be consulted again should the Council intend to make substantial modifications to the Commission proposal;
 5. Instructs its President to forward this opinion to the Council and Commission.

⁽¹⁾ OJ C

B EXPLANATORY STATEMENT

Background to and basis for the Commission proposal

To enable the European Union to take coherent and coordinated action in the fight against organized crime, the High-Level Group set up by the Dublin European Council (13-14 December 1996) drew up early in 1997 a comprehensive 'Action Plan to combat organized crime' with concrete recommendations and timetables. The ministers responsible for justice and home affairs endorsed this plan at their meeting of 28 April 1997. The Amsterdam European Council on 17 June 1997 approved the Action Plan⁽¹⁾ and called upon the Council of Ministers to take the measures necessary for its implementation.

The action plan comprises an introduction, 15 political guidelines and a detailed action plan with 30 concrete recommendations (divided into chapters entitled 'An approach to the phenomenon of organized crime', 'Prevention of organized crime', 'Legal instruments, scope, implementation', 'Practical cooperation between police, judicial authorities and customs in the fight against organized crime', 'Development of a fully-fledged Europol and extension of Europol's mandate and tasks', and 'Organized crime and money'). The European Parliament issued a detailed opinion on this Action Plan on 20 November 1997⁽²⁾.

Under the Luxembourg Presidency the Council has begun to implement individual recommendations from the Action Plan. To date it has consulted the European Parliament on four draft joint actions (on making corruption in the private sector a criminal offence; on making it a criminal offence to participate in a criminal organization in the Member States of the European Union; on the creation of a European judicial network; and on establishing a mechanism for evaluating the application and implementation at national level of international undertakings in the fight against organized crime). The European Parliament also issued an opinion on these drafts on 20 November 1997.⁽³⁾

The Council is now consulting the European Parliament on the Commission proposal for a Council Decision on a joint action establishing a programme of exchanges, training and cooperation for persons responsible for action to combat organised crime (the Falcone programme) pursuant to Article K.6(2) of the Treaty on European Union.

The basis for the Commission's proposal is Recommendation No. 11 contained in Chapter II of the Action Plan (Prevention of Organized Crime), which reads:

'The Council should adopt a joint action establishing a specific multi-annual programme to combat organized crime, including fraud affecting the financial interests of the Communities, permitting specific actions in the fields of training for key players responsible for preventive policies, exchanges of information, research and other forms of improving skills and operational methods. Target date: end 1997

Responsible: Council Commission'

⁽¹⁾ OJ C 251, 15.8.1997, p.1

⁽²⁾ A4-0333/97

⁽³⁾ A4-0348/97, A4-0349/97, A4-0351/97 and A4-0355/97.

The primary aim of the Commission proposal is thus to improve cooperation between persons involved in combatting organized crime (mainly by way of training and operational measures).

The Commission proposal, however, goes beyond the framework of Recommendation no. 11 and seeks to achieve a **comprehensive, multi-annual financial instrument capable of implementing several recommendations of the Action Plan simultaneously**.

In addition to implementing Recommendation no. 11 it also seeks to

- fund several studies called for in the Action Plan (these include:
in Recommendation no. 5, a study on high-technology crime,
in Recommendation no. 7, a study on public tender procedures,
in Recommendation no. 12, a study on measures to shield vulnerable professions,
in Recommendation no. 17, a study on the practical effects of the approximation or harmonization of laws, and
in Recommendation no. 26, a study on money-laundering and the confiscation of the proceeds of crime),
- subsidise the establishment of various contact points (the Action Plan calls, inter alia:
in Recommendation no. 2 for a Contact and Support Network for the collection of data and its analysis,
in Recommendation no. 19 for central national contact points for the exchange of information and the completion of application procedures for law enforcement cooperation,
in Recommendation no. 20 for multidisciplinary integrated teams to develop coordinated national strategies, and
in Recommendation no. 21 for a network for judicial cooperation at European level,
- create a funding basis for the expert missions for mutual evaluation of the relevant national laws called for in Recommendation no. 15 (already given concrete form in the draft joint action establishing a mechanism for evaluating the application and implementation at national level of international undertakings in the fight against organized crime).

Substance of the proposal for a joint action

The Commission proposal for a Council Decision on a joint action establishing a programme of exchanges, training and cooperation for persons responsible for action to combat organised crime (Falcone programme), completed by the Commission on 20 October 1997 and forwarded by the Council to the European Parliament for consultation on 6 November 1997, is intended, on the basis of a multi-disciplinary multi-annual programme pursuant to Title VI of the Treaty on European Union, to intensify cooperation between persons responsible within the police and judiciary for combatting organized crime. It seeks, by means of funding, to permit the implementation of several recommendations from the Action Plan and, by setting up appropriate structures, to guarantee continued cooperation among persons responsible for combatting organized crime even after the Action Plan has expired. It also seeks to give those responsible in the candidate states, in the context of preparations for their accession, access to cooperation instruments, to make it easier for them to adopt the Community *acquis* and to bring their standards up to those of the Community in the fields covered by these programmes.

The Commission proposal comprises a preamble and fifteen articles:

- Article 1 defines the objective, the scope, the measures and the target population (judges, public prosecutors, police and customs officials, public tax officials, authorities responsible for the supervision of financial establishments, authorities responsible for the fight against fraud and corruption, representatives of professional groups).
- Article 2 specifies the types of training measures (knowledge of regulations and practices in other Member States, preparation of teaching modules, exchanges).
- Article 3 specifies the practical cooperation measures (carrying out joint operational projects).
- Article 4 specifies the types of measures which may be eligible (training courses, exchanges, meetings and seminars).
- Article 5 describes the feasibility studies and research which may be eligible.
- Article 6 provides for assistance with the establishment of contact and information points (though not for the funding of operational and administrative costs).
- Article 7 sets out conditions for the eligibility of individual measures (e.g. participation of at least two Member States); it also provides, under certain conditions, for the participation of persons from the candidate countries and from third countries;
- Article 8 describes the monitoring powers of the Commission and Court of Auditors.
- Article 9 sets the level of Community funding.
- Articles 10 to 15 reproduce in substance the corresponding provisions of the Grotius, Stop and Oisin programmes (Commission responsibility for administration and monitoring, establishment of a committee, differing approval procedures depending on the amount of money involved, monitoring of results, entry into force).

The financial statement shows that the proposal is to be funded from budget heading B5-800: cooperation in the fields of justice and home affairs (commitment appropriation: B0-40). Subject to the annual budgetary procedure, an indicative amount of ECU 10 m over 5 years (1997 to 2001) is set aside for the total cost of the measure. The breakdown by fields assumes that 30% of this amount will be used for courses and seminars, 23% for operational projects, 16% for research, 15% for training, 11% for dissemination of information and 5% for other operations.

Assessment of the proposal for a joint action

The Action Plan comprises numerous commitments which will cost money to implement. To enable both the timetable and the substance of these Action Plan commitments which were set out by the European Council in Amsterdam - to be adhered to, it is necessary to create a special funding instrument. To this extent the proposal to set up a separate exchange, training and cooperation programme running for several years and tailored to the specific needs of combatting organized crime, is emphatically welcomed.

The name given to the programme is also a happy choice, since the Italian judge Giovanni Falcone, who was murdered on 23 May 1992 near Palermo (together with his wife and three policemen), presumably by the Mafia, showed a persistence and refusal to be intimidated which have now made him a symbol - well beyond Italy's borders - of the committed fight against organized crime.

However, in the opinion of the European Parliament, a number of points in the Commission's proposal still require amendment.

The target population should be extended to include not only judges, public prosecutors, police, customs and tax officials and persons likely to be affected by the implementation of the Action Plan (mainly representatives of vulnerable professions like lawyers, notaries, accountants and auditors),

but also more generally people who may be of help with the implementation of certain recommendations (which may include technicians, computer specialists, various experts and social workers).

On the other hand the eligible measures in the field of training (exchanges, courses, seminars etc.) should not include conferences, because these are generally very expensive, while their educational value and their practical contribution to improving the fight against organized crime is mostly very limited (or at any rate insignificant compared to the cost of arranging such events).

In connection with its consultation on the *'Draft Joint Action establishing a mechanism for evaluating the application and implementation at national level of international undertakings in the fight against organized crime'* the European Parliament urged that the Community element in this evaluation system be increased. In other words the Community institutions (particularly the Commission) would become much more heavily involved in the evaluation which - in the Council's view - was to be based solely on intergovernmental mechanisms. However, there then arises the question of the cost of this more Community-oriented evaluation system. The greater communization of this mechanism for the mutual evaluation of Member States' laws, which the European Parliament has called for, should logically also be reflected in Community funding for expert missions to carry out such evaluation. The wording of the Commission proposal should make this clearer.

In several of its recommendations (expressly in nos. 5, 7, 12, 17 and 26 and indirectly in no. 18) the Action Plan provides for studies to be carried out before further (legislative or operational) measures are taken. These studies, which were already seen to be necessary by the Amsterdam European Council, should therefore be undertaken as a priority, taking account both of the timetable set out for each measure in the Action Plan and of the recommendations of the European Parliament in its resolution of 20 November 1997⁽¹⁾ on the action plan to combat organized crime.

It is vitally important that representatives from the candidate countries should be comprehensively included in these measures, particularly since several of these countries are currently under massive threat from the influence of criminal organizations. To ensure that these states, by the time of their accession, have acquired a legal and actual level of protection comparable with that of the Member States of the European Union, it is of major importance that persons responsible for combatting organized crime in these countries should be involved intensively and at an early stage.

In connection with monitoring powers, it should be specified that the results of the financial monitoring by the Commission and of the audits by the Court of Auditors must be forwarded to the budgetary authority to enable it to allocate appropriations in a responsible manner.

The European Parliament must be precisely informed of which appropriations have been used for what purpose and with what success. This means that the Commission must provide the European Parliament with regular and comprehensive information on the formation, implementation and assessment of the individual measures. This includes informing the European Parliament immediately of the decision on the next annual programme and on the annual report on measures carried out and their evaluation. The European Parliament must be free to express its opinion on the annual report, among other things to enable the Commission to take the views of the European Parliament into

⁽¹⁾ A4-0333/97.

account in its next draft annual programme. The Commission must in turn be obliged continually to pass on the views of the European Parliament to the committee.

A rational decision on whether and under what (if necessary modified) framework conditions the Falcone programme is to be continued will only be possible once the first evaluations are available. Accordingly the conditions under which the joint action may be continued need to be specified.

The financial statement is in need of revision on many points. For example, given that the Commission completed its proposal only on 20 October 1997 and the Council consulted Parliament only at the beginning of November 1997, a Council Decision on the proposal for a joint action cannot be expected before 1998. This will involve postponing the timetable of the programme (and probably that of its breakdown of costs).

Since the proposed joint action mainly takes the form of an exchange, training and cooperation programme for persons responsible for combatting organized crime, care should be taken to ensure that training is given a financial value which reflects these objectives. To that extent we have reservations about more appropriations being set aside in the financial statement for research as a whole than for training.