EUROPEAN PARLIAMENT

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ENGLISH EDITION

28 April 1998

A4-0164/98

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REPORT

on the draft joint action adopted by the Council on the basis of Article K.3 of the Treaty on European Union concerning arrangements for the better exchange of information in respect of payment card crime between Member States' law enforcement agencies, and between those agencies and the payment card industry, where such information is required for the investigation of offences
(5683/98 - C4-0136/98 - 98/0906 (CNS))

Committee on Civil Liberties and Internal Affairs

Rapporteur: Mr Gerhard Schmid

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PE 225.472/fin.

* Consultation procedure
simple majority
**I Cooperation procedure (first reading)
simple majority
**II Cooperation procedure (second reading)
simple majority to approve the common position
majority of Parliament's component Members to reject or amend the common position
*** Assent procedure
majority of Parliament's component Members to give assent
but simple majority under Articles 8a, 105, 106, 130d and 228 EC

***I Codecision procedure (first reading)
simple majority
***II Codecision procedure (second reading)
simple majority to approve the common position
majority of Parliament's component Members to adopt a declaration of intended rejection of the common position and amend the common position or confirm its rejection
***III Codecision procedure (third reading)
simple majority to approve the joint text
majority of Parliament's component Members to reject the Council text

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By letter of 3 March 1998 the Council consulted Parliament, pursuant to Article K.6, second paragraph, of the Treaty on European Union, on the draft joint action adopted by the Council on the basis of Article K.3 of the Treaty on European Union concerning arrangements for the better exchange of information in respect of payment card crime between Member States' law enforcement agencies, and between those agencies and the payment card industry, where such information is required for the investigation of offences (5683/98 - C4-0136/98 - 98/0906 (CNS)).

At the sitting of 9 March 1998 the President of Parliament announced that he had referred this draft to the Committee on Civil Liberties and Internal Affairs as the committee responsible and the Committee on Legal Affairs and Citizens' Rights, the Committee on Economic and Monetary Affairs and Industrial Policy and the Committee on Economic and Monetary Affairs and Industrial Policy for their opinions.

At its meeting of 18/19 March 1998 the Committee on Civil Liberties and Internal Affairs appointed Mr Gerhard Schmid rapporteur.

It considered the draft and the draft report at its meetings of 22/23 April and 27/28 April 1998.

At the latter meeting it adopted the draft legislative resolution unanimously.

The following took part in the vote: d'Ancona, chairman; Wiebenga, vice-chairman; Schmid, rapporteur; Bontempi, Brinkhorst (for De Luca), Cederschiöld, Deprez, Goerens, Lehne (for Pirker), Lindeperg, Mohamed Ali, Nassauer, Roth and Wemheuer (for Ford).

The Committee on Legal Affairs and Citizens' Rights, the Committee on Economic and Monetary Affairs and Industrial Policy and the Committee on the Environment, Public Health and Consumer Protection decided on 17 March 1998, 27 April 1998 and 16 April 1998 respectively not to deliver opinions.

The report was tabled on 28 April 1998.

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

A
LEGISLATIVE PROPOSAL

Draft joint action adopted by the Council on the basis of Article K.3 of the Treaty on European Union concerning arrangements for the better exchange of information in respect of payment card crime between Member States' law enforcement agencies, and between those agencies and the payment card industry, where such information is required for the investigation of offences (5683/98 - C4-0136/98 - 98/0906 (CNS))

The proposal is approved with the following amendments:

Council text	Amendments by Parliament
(Amendment 1) Article 2.1	
2.1 Each Member State shall, subject to national constitutional requirements, designate or establish a national contact point to forward and receive requests for information on the use or suspected use of payment cards in the furtherance of international organized crime. Where possible, this contact point should be located with the central national contact point designated in accordance with recommendation 19 of the High Level Group's Action Plan to combat organized crime.	2.1. Each Member State shall, subject to national constitutional requirements, designate or establish a national contact point to forward and receive requests for information on the counterfeiting or misuse of payment cards or the misuse of information stored thereon (hereinafter referred to as 'use of payment cards') in the furtherance of international organized crime. Where possible, this contact point should be located with the central national contact point designated in accordance with recommendation 19 of the High Level Group's Action Plan to combat organized crime.

(Amendment 2)
Article 2.2

2.2 The national contact points so designated shall be points through which liaison: (a) between Member States' national law enforcement agencies, and (b) between those agencies and the payment card industry may be facilitated and strategic information on serious offences sought and supplied in accordance with national law.	2.2 The national contact points so designated shall be points through which liaison: (a) between Member States' national law enforcement agencies, and (b) between those agencies and the payment card industry may be facilitated and strategic information on serious offences sought from and supplied by those agencies and issuers in accordance with national law and the following conditions.

(Amendment 3)
Article 3.2, introductory clause

3.2 Information which may be sought by and exchanged between national law enforcement agencies and other relevant authorities in respect of payment card crime under Article 2.1 above may include:	3.2 Information which may be sought by and exchanged between national law enforcement agencies and other relevant authorities in order to prevent, detect and investigate payment card crime under Article 2.1 above may include:

(Amendment 4)
Article 3.2a (new)

	3.2a Information obtained pursuant to Article 3.2(c) and (e) may be passed on by national contact points to issuers at the request of the latter.

(Amendment 5)
Article 3.3

3.3. The requested Member State and its relevant authorities shall have the final decision on the nature and extent of information supplied on the basis of this Joint Action.	delete

(Amendment 6)
Article 4.3(b)a (new)

(b)a ensure that the information passed on to issuers pursuant to Article 3.2a contains no personal data.

(Amendment 7)
Article 7 (new)

ARTICLE 7: PERIOD OF VALIDITY OF THE JOINT ACTION

As soon as the Council has entrusted Europol with the combating of payment card crime, too, following the entry into force of the Europol Convention, this Joint Action shall cease to apply.

DRAFT LEGISLATIVE RESOLUTION

Legislative resolution embodying Parliament's opinion on the draft joint action adopted by the Council on the basis of Article K.3 of the Treaty on European Union concerning arrangements for the better exchange of information in respect of payment card crime between Member States' law enforcement agencies, and between those agencies and the payment card industry, where such information is required for the investigation of offences (5683/98 - C4-0136/98 - 98/0906 (CNS))

(Consultation procedure)

The European Parliament,

- having regard to the Council proposal (5683/98 - 98/0906 (CNS)),

- having been consulted by the Council pursuant to Article K.6, second paragraph of the Treaty on European Union (C4-0136/98),

- having regard to Rule 58 of its Rules of Procedure,

- having regard to the report of the Committee on Civil Liberties and Internal Affairs (A4-0164/98),

1. Approves the Council proposal, subject to Parliament's amendments;

2. Calls on the Council to notify Parliament should it intend to depart from the text approved by Parliament;

3. Instructs its President to forward this opinion to the Council and Commission.

B

EXPLANATORY STATEMENT

1. Basic stance on the draft Joint Action

What has first had to be verified, in addition to the details of the proposed Joint Action to improve the exchange of information on payment card crime, is whether such an action is needed at all. It is perfectly reasonable to take the view that the damage caused by credit card fraud is a purely economic problem which ought to be solved by the credit card issuers themselves. Closer examination reveals that there is a public interest in containing credit card fraud.

In 1992, worldwide sales using payment cards amounted to US $ 880 trillion (Visa 53%, Mastercard 29%, American Express 13%, others 5%). Losses as a result of the various types of payment card fraud are between 0.1% and 0.2% of turnover, i.e. about US $ 1 billion is taken out of normal economic circulation each year through criminal misappropriation.

Credit card crime extends over a broad range:

- misuse of stolen cards
- modification of data recorded on cards
- transferring data on the magnetic stripe
- use of blank plastic cards in order, in collusion with criminal traders, to imitate the function of a credit card ('white plastics')
- complete counterfeiting.

With the exception of complete counterfeiting, the techniques required are simple and do not call for large-scale investment. Nonetheless, credit card crime mostly takes place on an organized basis. Stolen credit cards are acquired through random pickpocketing and are sold to appropriate organizations. They are used repeatedly, mostly abroad, on an organized basis. The goods acquired in this way are sold by 'fence' organizations. Connections have been established with Chinese, Nigerian and Russian organized crime. Such groups operate along the lines of 'conglomerates' in a number of criminal areas. No area of activity must therefore be omitted from the process of combating organized crime rigorously. What is at issue here is not only economic harm, but, rather, also the dangers to society from such organizations. Anything which makes them financially stronger increases those dangers.

Rigorous containment of credit card crime calls for technical measures to improve counterfeit proofing and to replace signatures by a numeric code (chip card with PIN). To some extent, there is resistance on the part of credit card organizations to this recommendation, which was also made by the London conference on credit card crime in November 1996, because the readers required are expensive and lessen traders' acceptance of cards. It cannot therefore be assumed that credit card organizations automatically are doing everything to contain the improper use of cards in an optimum fashion. For that reason, the Commission must check whether it does not make sense, and whether it is not necessary, to lay down a legally binding security standard for the EU, another reason being the increasing improper use of use of credit card data in connection with electronic and telephone transactions. The proposal for a Joint Action submitted by the British Government is a step in the right direction, but is not sufficient.

2. Substance of the draft

The draft seeks to promote and facilitate the exchange of information on payment card crime and set up a network of national contact points to this end.

In addition to the preamble, the draft comprises six articles:

- Article 1 contains three definitions (card payment system, issuer and account number).

- Article 2 regulates the establishment of national contact points intended to improve relations between Member State agencies and between agencies and the payment card industry. To this end, the contacts points are to collect and forward information on the use or suspected use of payment cards. This information activity is intended, however, to be restricted to specific cases; the only information on payment card crime to be collected and exchanged would be:
  - strategic information,
  - information on serious offences and
  - information establishing links with international organized crime.

  As Recommendation No 19 of the Action Plan to combat organized crime([1]) already advocates the setting up of central national contact points in order to speed up the exchange of information and the completion of application procedures for law enforcement cooperation, Article 2 suggests that the contact points to be set up under this Joint Action should be located with the central national contact points proposed by the Action Plan.

- Article 3 defines in greater detail the type of information to be exchanged: information exchange should serve to prevent, detect and investigate international organized criminal activity. Specifically, information should be collected to establish the identity of the issuer, card holder or account holder, and details should be collected on fraudulent transactions, account numbers and the payment card system.

  The nature and extent of the specific information exchanged is to be a matter for each individual Member State, however, which would also determine, in accordance with national law, the conditions under which such information is supplied.

- Article 4 calls for such information to be treated confidentially: essentially, action should be taken to ensure that personal data exchanged between national contact points and their relevant authorities are utilized only by those authorities in order to solely investigate, detect and prevent criminal activity.

- Article 5 obliges the Member States, when supplying and exchanging information, to observe the principles of the European Convention on Human Rights (together with the protocols thereto) and the 1981 Council of Europe Convention, Directive 95/45/EC and the 1987 Recommendation No R(87) 15 of the Committee of Ministers of the Council of Europe regulating the use of personal data by the police.

- Article 6 regulates the entry into force of the Joint Action.

([1]) OJ C 251, 15.8.1997, p. 1.

3. The grounds for the amendments

Article 2.1 of the draft (to which subsequent articles also make reference) defines the act on which the exchange of information is to be based, the starting point being tersely termed the 'use or suspected use of payment cards'. This wording is not precise, however, and is furthermore misleading.

On the understanding that 'use' or 'suspected use' is not in any way inherently unlawful, the aim of the draft - to exchange information on payment card crime - is likely to be better served by a specific definition of the acts to be covered. The acts already listed in the first part of the explanatory statement can be grouped under the headings 'counterfeiting or misuse of payment cards' or, as the case may be, 'misuse of information stored on payment cards. The draft should be geared to these specific combinations and not simply refer to 'use' (Amendment 1).

Article 2.2 of the draft defines one objective, among others, as being to improve relations between agencies and the payment card industry. The terms 'payment card industry' is a very broad one, moreover, not defined in more detail - and encompasses payment card production facilities and marketing, production facilities for equipment for reading codes contained on cards, systems for the transmission of debits to be made, the associated security systems and a host of other payment card related services. Not only is the intricate offshoot structure of the credit card industry not transparent to the authorities (for example, credit cards are usually pressed and marketed in different places); but so comprehensive an information relationship will also be virtually impossible for the authorities to cope with. Basically, however, what matters is not that information should be supplied to the entire credit card industry; it is sufficient to pass on information to issuers if they ask for it. Whether and to what extent and to whom they pass on information within their internal organizational structure can very well be left to the issuers themselves to decide on. After all, it is the issuers which are most likely to be able to make a judgment as to which internal organizational measures can best prevent or detect the misuse of payment cards. For that reason, in operational terms, improvement of the information relationship between agencies and the credit card industry should be confined to direct information liaison between agencies and the issuers of payment cards. There is sufficient guarantee that by passing on information internally, for instance to the producers of cards or readers, relations between agencies and the payment card industry as a whole will be improved (Amendment 2).

Article 3.2 of the draft defines in detail the type of information which may be exchanged. Since, however, the draft seeks above all to improve payment card crime prevention, in addition to detection and investigation, information exchange should include not only details on payment card crime, but also details as to how it can be prevented. To that extent this provision in the draft must be spelled out (Amendment 3).

The draft contains no specific implementing provision for the trailed policy intent of improving information relations between agencies and the payment card industry. Given that information on modus operandi is of greatest interest to issuers, action must first be taken to expressly enable such information to be conveyed to them. However, issuers should receive only strategic information containing precise details on fraudulent transactions in the case of payment card crime, and/or technical details of the payment card system (Amendment 4).

One provision ultimately allowing each Member State to decide on the type and scope of information runs counter to the central objective of this Joint Action. Ultimately, it would be for each Member State to determine the extent of its cooperation itself, which might possibly vary from one case to the next. However, that would obviate the need for arrangements along Joint Action lines. If joint action is sought, a general willingness to cooperate is a prerequisite, if that is lacking a joint approach to solving the problem is rendered valueless. For that reason, the possibility of 'opting out' is not acceptable (Amendment 5).

In this area, information is usually not passed on from agencies to private individuals in the context of criminal proceedings; the permissible scope for such action is narrowly defined. Bearing in mind that the payment card industry is primarily interested in strategic information, it is sufficient for the information referred to in subparagraphs c and e of Article 3.2 to be passed on (precise details concerning fraudulent transactions, technical information on the payment card system concerned). Particularly given that, in principle this information can be passed on by issuers, action must furthermore be taken to ensure that agencies supply issuers with no personal data (amendment 6).

It is fundamentally impractical to set up a dedicated information system plus associated structures for every specific problem in the area of organized crime. As a rule, this lead to confusion and hence also complicates law enforcement for what is a complex form of crime. Allowing also for the fact that organized crime normally extends over a number of areas of offences, it would be counterproductive to break down the individual types of offence at the investigative stage. Such action would make it difficult to build up an overall picture of organized crime from individually established pieces of the jigsaw. Efforts should therefore be directed at ensuring that, in the medium term, the tasks regulated in this connection are handled by Europol.

Since, however, there is already an urgent need for action to combat payment card crime, it is not desirable if a start cannot be made on realizing this objective until the Europol Convention has entered into force and Europol's terms of reference have been extended to include fraud and the counterfeiting of money and means of payment (and hence also the improper use of payment cards). For this reason, the special arrangement proposed by the draft is acceptable, though the fact that this task must be taken over by Europol at a later date must be expressed in a separate article (Amendment 7).

Strasbourg Notebook

Friday, 15 May 1998

Credit Cards - coordinating the fight against fraud
Consultation procedure
(A4-00164/98 - Schmid)

Friday 15 May - The report by Gerhard Schmid (D, PES) on payment card crime was adopted with all seven amendments tabled by the Committee of Civil Liberties and Internal Affairs.

In the debate Mr Schmid said that fear of crime was as great a worry to the public as fear of unemployment. Sometimes specialist pickpockets were brought to a particular area for a day's work and then took a plane to, say, Asia where the stolen cards would be sold for cash. This criminal activity amounts to one billion dollars per year. Techniques varied from the forgery of signatures to the alteration or complete forgery of credit cards. The illicit profits could subsequently turn up in honest companies. The UK government had put forward a proposal for an exchange of information between the police forces of different countries on new ways of operating by criminals. Such information should also be exchanged between credit card companies. What was needed was uniform security features in credit cards everywhere. At present, each credit institution used a different security system. Another problem was that it was sometimes cheaper for credit card institutions to pay insurance than to incorporate security features in their cards. However, organised crime must be combatted because it undermined society.

Martin Schulz (D, PES) said that technical progress led to increasing risks of abuse unless comparable standards were developed at the same time to manage and monitor the new technology. These standards should be common throughout the EU. We did not need umpteen national systems. Europol was probably the appropriate body for coordinating action in this field.

Otto von Habsburg (D, EPP) warned against a global war that was looming against organised crime, which was exploiting the explosion of knowledge in the form of new technology. Governments were trailing behind criminal organisations, who worked much faster than those who kept within the law.

Paul Rübig (A, EPP) said that children from Romania, trained in pick-pocketing, were being smuggled into the EU. There were also increasing numbers of counterfeit credit cards in circulation. He suggested that credit cards carry the photographs and fingerprints of their owners.

Commissioner Franz Fischler welcomed the Schmidt report which, he said, would be of practical benefit to all those concerned by fraud in the member states. It would form part of the EU action plan for dealing with organised crime. Under this action plan, the Commission was considering measures to deal with fraud in general, including credit card fraud. The agreement on Europol would come into force this year and Europol would thus be capable of acting in this field.

0. **Payment card crime** * (debate and vote)

Mr Schmid introduced his report, drawn up on behalf of the Committee on Civil Liberties and Internal Affairs, on the draft joint action adopted by the Council on the basis of Article K.3 of the Treaty on European Union concerning arrangements for the better exchange of information in respect of payment card crime between Member States' law enforcement agencies and between those agencies and the payment card industry, where such information is required for the investigation of offences (5683/98 - C4-0136/98 - 98/0906(CNS)) (A4-0164/98).

The following spoke: Mr Schulz, on behalf of the PSE Group, Mr von Habsburg, on behalf of the PPE Group, Mr Rübig and Mr Fischler, Member of the Commission.

The President closed the debate.

VOTE:
(Simple majority)

– DRAFT JOINT ACTION 5683/98 - C4-0136/98 - 98/0906(CNS):

Amendments adopted: 1 to 7 collectively

Parliament approved the draft joint action as amended *(Part II, Item 4)*.

– DRAFT LEGISLATIVE RESOLUTION:

Explanations of vote were made by the following Members:
- *in writing:* Holm, Schörling, Gahrton

Parliament adopted the legislative resolution *(Part II, Item 4)*.

EUROPA-PARLAMENTET
EUROPÄISCHES PARLAMENT
ΕΥΡΩΠΑΪΚΟ ΚΟΙΝΟΒΟΥΛΙΟ
EUROPEAN PARLIAMENT

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EUROPEAN PARLIAMENT

7 May 1998 A4-0164/1

AMENDMENT 1
tabled by the Committee on Civil Liberties and Internal Affairs

REPORT by Mr Schmid (A4-0164/98)

PAYMENT CARD CRIME

Draft joint action
5683/98 - C4-0136/98 - 98/0906(CNS)

Council text	Amendment
	(Amendment 1) Article 2.1
2.1. Each Member State shall, subject to national constitutional requirements, designate or establish a national contact point to forward and receive requests for information on the use or suspected use of payment cards in the furtherance of international organized crime. Where possible, this contact point should be located with the central national contact point designated in accordance with recommendation 19 of the High Level Group's Action Plan to combat organized crime.	2.1. Each Member State shall, subject to national constitutional requirements, designate or establish a national contact point to forward and receive requests for information on the counterfeiting or misuse of payment cards or the misuse of information stored thereon (hereinafter referred to as 'use of payment cards') in the furtherance of international organized crime. Where possible, this contact point should be located with the central national contact point designated in accordance with recommendation 19 of the High Level Group's Action Plan to combat organized crime.

EUROPEAN PARLIAMENT

7 May 1998 A4-0164/2

AMENDMENT 2
tabled by the Committee on Civil Liberties and Internal Affairs

REPORT by Mr Schmid (A4-0164/98)

PAYMENT CARD CRIME

Draft joint action
5683/98 - C4-0136/98 - 98/0906(CNS)

Council text	Amendment
	(Amendment 2) Article 2.2
2.2. The national contact points so designated shall be points through which liaison: (a) between Member States' national law enforcement agencies, and (b) between those agencies and the payment card industry may be facilitated and strategic information on serious offences sought and supplied in accordance with national law.	2.2. The national contact points so designated shall be points through which liaison: (a) between Member States' national law enforcement agencies, and (b) between those agencies and the payment card industry may be facilitated and strategic information on serious offences sought <u>from</u> and supplied <u>by those agencies and issuers</u> in accordance with national law <u>and subject to the following conditions</u>.

EUROPEAN PARLIAMENT

7 May 1998 A4-0164/3

AMENDMENT 3
tabled by the Committee on Civil Liberties and Internal Affairs

REPORT by Mr Schmid (A4-0164/98)

PAYMENT CARD CRIME

Draft joint action
5683/98 - C4-0136/98 - 98/0906(CNS)

Council text	**Amendment**
	(Amendment 3) Article 3.2, introductory clause
3.2. Information which may be sought by and exchanged between national law enforcement agencies and other relevant authorities in respect of payment card crime under Article 2.1 above may include:	3.2. Information which may be sought by and exchanged between national law enforcement agencies and other relevant authorities in order to prevent, detect and investigate payment card crime under Article 2.1 above may include:

EUROPEAN PARLIAMENT

7 May 1998 A4-0164/4

AMENDMENT 4
tabled by the Committee on Civil Liberties and Internal Affairs

REPORT by Mr Schmid (A4-0164/98)

PAYMENT CARD CRIME

Draft joint action
5683/98 - C4-0136/98 - 98/0906(CNS)

Council text	Amendment
	(Amendment 4) Article 3.2a (new)
	3.2a Information obtained pursuant to paragraph 3.2(c) and (e) may be passed on by national contact points to issuers at the request of the latter.

EUROPEAN PARLIAMENT

7 May 1998 A4-0164/5

AMENDMENT 5
tabled by the Committee on Civil Liberties and Internal Affairs

REPORT by Mr Schmid (A4-0164/98)

PAYMENT CARD CRIME

Draft joint action
5683/98 - C4-0136/98 - 98/0906(CNS)

Council text	Amendment
	(Amendment 5) Article 3.3
3.3. The requested Member State and its relevant authorities shall have the final decision on the nature and extent of information supplied on the basis of this Joint Action.	Deleted

EUROPEAN PARLIAMENT

7 May 1998 A4-0164/6

AMENDMENT 6
tabled by the Committee on Civil Liberties and Internal Affairs

REPORT by Mr Schmid (A4-0164/98)

PAYMENT CARD CRIME

Draft joint action
5683/98 - C4-0136/98 - 98/0906(CNS)

Council text	Amendment

(Amendment 6)
Article 4.3(ba) (new)

	(ba) ensure that the information passed on to issuers pursuant to Article 3.2a contains no personal data.

EUROPEAN PARLIAMENT

7 May 1998 A4-0164/7

AMENDMENT 7
tabled by the Committee on Civil Liberties and Internal Affairs

REPORT by Mr Schmid (A4-0164/98)

PAYMENT CARD CRIME

Draft joint action
5683/98 - C4-0136/98 - 98/0906(CNS)

Council text	Amendment
	(Amendment 7) Article 6a (new)
	ARTICLE 6a: PERIOD OF VALIDITY OF THE JOINT ACTION
	This Joint Action shall cease to apply as soon as the Council has entrusted Europol also with the combating of payment card crime, following the entry into force of the Europol Convention.