



COUNCIL OF

ENFOCUSTOM 25

CRIMORG 30

~~COMIX 169~~

NOTE

from : Presidency

to : Police Cooperation Working Party (Mixed Committee EU/Iceland, Norway and Switzerland)

No. prev. doc. : 5284/1/06 ENFOPOL 5 ENFOCUSTOM 4 CRIMORG 5 COMIX 43 REV 1
15136/05 ENFOPOL 173 ENFOCUSTOM 85 CRIMORG 150 COMIX 802
13927/1/05 ENFOPOL 138 ENFOCUSTOM 63 CRIMORG 120 COMIX 719
11407/05 ENFOPOL 95 ENFOCUSTOM 38 CRIMORG 75 COMIX 489

Subject : Proposal for a Council Decision on the improvement of police cooperation between the Member States of the European Union, especially at the internal borders and amending the Convention implementing the Schengen Agreement

- Redraft of the proposal

Delegations will find enclosed a proposal for a re-draft of the above-mentioned proposal, as it will be transmitted to the Parliament.

Proposal for a

COUNCIL DECISION

**on the improvement of police cooperation between the Member States of
the European Union, especially at the internal borders and amending
the Convention implementing the Schengen Agreement**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 30(1)(a), (b) and (c),
Article 32 and Article 34(2)(c) thereof,

Having regard to the proposal from the Commission¹,

Having regard to the opinion of the European Parliament²,

Whereas:

- (1) Article 29 of the Treaty on European Union states that the Union's objective is to provide citizens with a high level of safety within an area of freedom, security and justice by developing common action among the Member States in the fields of police and judicial cooperation in criminal matters.
- (2) The Vienna Action Plan of 11 December 1998³ encourages the close cooperation of judicial, police, customs and other relevant authorities in preventing and combating crime, organised or otherwise, and calls for determination of the conditions and limitations under which the competent police and customs authorities of one Member State may operate in the territory of another Member State, in liaison and in agreement with the latter.

¹ OJ C [...], [...], p. [...].

² OJ C [...], [...], p. [...].

³ OJ C 19, 23.1.1999, points 42 and 44(b).

- (3) The conclusions of the European Council of 15 and 16 October 1999 in Tampere affirm the need to step up cooperation against crime by deriving maximum benefit from cooperation between Member States' authorities when investigating cross-border crime in any Member State and call for joint investigation teams as provided for in Council Framework Decision 2002/465/JHA⁴.
- (4) The Convention of 1990 implementing the Schengen Agreement of 14 June 1985 on the gradual abolition of checks at common borders⁵ (hereinafter referred to as "the Schengen Convention"), and integrated into the framework of the European Union pursuant to the Protocol annexed to the Treaty on European Union and the Treaty establishing the European Community, introduced new forms of cooperation between police authorities of the Member States as one of the measures to compensate for the abolition of the checks at the common borders of the Schengen Member States. The Schengen Convention came into effect on 26 March 1995, since when cooperation between Member States' police and customs authorities has increased significantly.
- (5) Member States have concluded a large number of bilateral agreements and arrangements to attend to the specific cooperation needs in border regions. In the absence of a Union approach, differences in the level of security along the common borders may exist, as can be derived from the recommendations issued by the Ministers on the basis of the reports of the Standing Committee on the evaluation and implementation of the Schengen Convention.
- (6) In its Communication to the European Parliament and the Council on enhancing police and customs co-operation in the European Union⁶, the Commission highlights the need to significantly increase the instruments, operational measures and efforts that Member States deploy at their internal borders to transform the Union into a genuine area of freedom, security and justice.

⁴ OJ L 162, 20.6.2002, p.1.

⁵ OJ L 239, 22.9.2000, p.19.

⁶ COM(2004)376 final of 18 May 2004.

- (7) The programme adopted by the European Council at its meeting of 4 and 5 November 2004 in The Hague, invites the Commission to present proposals to further develop the Schengen *acquis* in respect of cross border operational police cooperation. The Programme acknowledges that an optimal level of protection of the area of freedom, security and justice requires multi-disciplinary and concerted action both at the level of the Union and at national level between the competent law enforcement authorities, especially police, customs and border guards.
- (8) It is therefore necessary to improve police cooperation especially at the internal borders of the European Union by multilateral means in order to bring about an improved exchange of information, better coordination, and operational cooperation. This Decision should aim at (...) simplification and acceleration of procedures, emphasise operational aspects based on common strategic considerations, and increase the effectiveness and efficiency of the deployment of human and material resources.
- (9) **(deleted)**
- (10) Efficient cooperation can only be achieved through comprehensive coordination. Therefore, Member States should coordinate the activities of police and customs in border regions by such means as common operational and resource planning, a permanent mutual consultation and information mechanism and, if need be, joint training (...).
- (11) Forms of operational cooperation should be established in order to increase the joint availability of resources, the efficiency of their deployment, and the effectiveness of the handling of routine tasks as well as of special situations.
- (12) Permanent **arrangements or** structures for exchange of information should be established in order to promote cooperation and coordination, and to monitor the underlying processes.
- (13) **(deleted)**

- (14) The provisions of the Schengen Convention concerning cross-border surveillance and cross-border hot pursuit should be amended with a view to increase the effectiveness and success of criminal investigations and operations by authorising cross-border surveillance and cross-border hot pursuit in the case of criminal investigations into a criminal offence for which surrender or extradition is possible. Furthermore, cross-border hot pursuit should not only be over land borders.
- (15) Since the objectives of the proposed action, namely improving operational co-operation between police and customs authorities, especially at the internal borders, cannot be sufficiently achieved by the Member States, given the cross-border nature of security issues, and can therefore by reason of the interdependence of Member States, be better achieved at the level of the European Union, the Council may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the EC Treaty and referred to in Article 2 of the EU Treaty. In accordance with the principle of proportionality as set out in Article 5 of the EC Treaty, this Decision does not go beyond what is necessary, in order to achieve those objectives.
- (16) The United Kingdom is taking part in this Decision, except for Article 11(2) **and Article 12 to the extent that it relates to Article 11(2)** of this Decision, in accordance with Article 5 of the Protocol integrating the Schengen *acquis* into the European Union annexed to the Treaty on European Union and to the Treaty establishing the European Community, and Article 8(2) of Council Decision 2000/365/EC of 29 May 2000 concerning the request of the United Kingdom of Great Britain and Northern Ireland to take part in some of the provisions of the Schengen *acquis*.
- (17) Ireland is taking part in this Decision, except for the Article 11(1) and (2) **and Article 12** of this Decision, in accordance with Article 5 of the Protocol integrating the Schengen *acquis* into the European Union annexed to the Treaty on European Union and to the Treaty establishing the European Community, and Article 6(2) of Council Decision 2002/192/EC of 28 February 2002 concerning Ireland's request to take part in some of the provisions of the Schengen *acquis*.

- (18) **(deleted)**
- (19) As regards Iceland and Norway, this Decision constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the association of those two States with the implementation, application and development of the Schengen *acquis*, which fall within the area referred to in Article 1, point H of Council Decision 1999/437/EC of 17 May 1999 on certain arrangements for the application of that Agreement⁷.
- (20) As regards Switzerland, this Decision constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Agreement signed by the European Union, the European Community and the Swiss Confederation concerning the association of the Swiss Confederation with the implementation, application and development of the Schengen *acquis* which fall within the area referred to in Article 1, point H of Council Decision 1999/437/EC of 17 May 1999 on certain arrangements for the application of that Agreement read in conjunction with Article 4 (1) of the Council Decision 2004/849/EC⁸ on the signing, on behalf of the European Union, and on the provisional application of certain provisions of that Agreement.
- (21) **Article 11 of this Decision constitutes a development of the provisions** building on the Schengen *acquis* or otherwise related to it within the meaning of Article 3(2) of the 2003 Act of Accession.
- (22) This Decision respects fundamental rights, and observes the principles recognised **by Article 6 of the Treaty on European Union and reflected in** the Charter of Fundamental Rights of the European Union⁹,

⁷ OJ L 176, 10.7.1999, p. 31.

⁸ OJ L 368 of 15.12.2004, p. 26.

⁹ **OJ C 364 of 15.11.2000, p. 1**

HAS DECIDED AS FOLLOWS:

Article 1

Subject-matter

1. This Decision lays down general rules to promote strategic coordination and operational cooperation between the authorities covered by this Decision as defined in Article 2(c), in particular at the internal borders, and to increase the level of security of the citizens of the European Union, by:
 - (a) strengthening and improving¹⁰ the cooperation between Member States in the technical and practical implementation of the provisions on information exchange as set out in the relevant EU provisions¹¹;
 - (b) taking joint action in the strategic coordination of cross-border operational cooperation¹² on a permanent basis and in accordance with national law and organisation;
 - (c) taking joint action in carrying out cross-border operational activities in accordance with national law and organisation.
2. This cooperation, in particular between Member States sharing an internal border, shall aim to:
 - (a) prevent, detect and investigate¹³, in accordance with national law, any type of crime, **in particular crime having an** impact on the level of security of border regions;

¹⁰ Suggestion to include "at national level".

¹¹ Suggestion to add "so that authorities covered by this Decision can easily obtain the information they need to prevent and combat cross-border criminality, especially in the border regions".

¹² Suggestion to include "in the border regions".

¹³ Proposal to delete the term "investigate".

- (x) **prevent, detect and investigate, in accordance with national law, infringements of Community and national customs provisions constituting criminal offences within the meaning of the Convention of 18 December 1997 on mutual assistance and cooperation between customs administrations¹⁴**
- (b) prevent threats to public order and internal security, and address disturbances to public order;
- (c) promote the security of cross-border traffic when under the responsibility of authorities covered by this Decision **and without prejudice to the competences of the judicial authorities;**
- (d) assist each other to prevent and **detect** criminal offences that cause or are likely to cause emergencies, calamities or serious accidents and, as appropriate, assist each other in planning and executing the cross-border law enforcement response to emergencies, calamities or serious accidents;
- (e) develop and maintain a high level of knowledge of the authorities covered by this Decision and their respective legal and administrative systems;
- (f) improve the skills of the officers of the authorities covered by this Decision, including language training, with regard to expert knowledge required for cooperation in a specific border region without prejudice to but supplementing the activities of the European Police College (CEPOL) in this area.

3. This Decision does not affect the abolition of internal border checks as laid down in Title III of the Regulation of the European Parliament and of the Council establishing a Community Code on the rules governing the movement of persons across the borders¹⁵.

¹⁴ OJ C 24 of 23.1.1998, p. 1.

¹⁵ OJ L [...], [...], p. [...].

Article 2
Definitions

For the purpose of this Decision, with the exception of Article 11:

- a) “Internal border” shall mean a common land or waterway border between Member States.
- b) “Border region” shall mean the area adjacent to one or more internal borders, to be defined by each Member State.
- c) “Authority covered by this Decision” shall mean a (...) police, customs, or other authority, that is authorised by national law to detect, prevent and investigate offences or criminal activities **or to maintain public order and internal security** and to exercise authority and take coercive measures in the context of such activities¹⁶, with the exception of judicial authorities

Article 3
Information exchange

(deleted)

¹⁶ Text proposal for paragraph (c): "Authority covered by this Decision" shall mean (...) police customs *and* other authority that is authorised by national law:
- to detect, prevent or investigate offences or criminal activities *and/or*
- to prevent threats to public order and internal security *and/or*
- to promote and control traffic security *and/or*
- to prevent and respond to emergencies, calamities or serious accidents
and to exercise authority and take coercive measures in the context of such activities, with the exception of judicial authorities.

Article 4
Strategic coordination

1. Without prejudice to the competencies of judicial authorities, Member States shall coordinate cross-border activities of the authorities covered by this Decision [**especially**] in the border region.
 - (a) This coordination shall include in particular:
 - (i) the examination of compatibility and interoperability of equipment, in particular communication and surveillance technology;
 - (ii) the development and implementation of joint training (...). Action in this area may consist of work visits, exchange programmes, common schooling projects, including language training, and, **supplementing the activities of the European Police College (CEPOL) in this area**, the development of common education modules in relation to cooperation in a specific border region;
 - (iii) **the mutual sharing of information between the authorities covered by this Decision in the border region and the permanent cooperation arrangements and structures referred to Article 6(1) on administrative and organisational developments that can have an impact on the performance of those authorities, arrangements and structures**

(b) This coordination may¹⁷ also include the preparation, coordination and implementation of operational planning and activities, e.g. surveillance operations, searches, and crime prevention measures, including management of international public events and the respective resources scheduling, notably by

- keeping the authorities covered by this Decision in the border region and the permanent cooperation structures mentioned in Article 6(1) informed, both spontaneously and in a timely manner, of work schedules, intended operations and actions, including surveillance, covert operations and controlled deliveries, and upcoming events that may have an impact on those authorities and structures on the other side of the internal border, without prejudice to the necessary confidentiality of this information
- drawing up common risk assessment and situation reports¹⁸;

(...)

2. (deleted)

¹⁷ Proposal to replace this sentence and the chapeau of (a) with the following wording: *"When, in a border region, authorities covered by this Decision carry out operational planning and activities, e.g. surveillance operations, searches, and crime prevention measures, including management of international public events and the respective resources scheduling, they shall coordinate their preparation and implementation with the authorities of the neighbouring border region by"*

¹⁸ **Proposal to make this action mandatory.**

Article 5
Operational cooperation

1. With a view to implementing the strategic coordination set out in Article 4, Member States shall ensure the appropriate operational cooperation, **without prejudice to the competencies of judicial authorities.**

This cooperation may include in particular: ¹⁹

- a) conducting joint patrols and joint control operations in border regions to pursue the objective and purpose of Article 1, it being understood that
 - these patrols are carried out **under the responsibility of the Member State in whose territory they are taking place and** in accordance with Article 21(a) of the Regulation of the European Parliament and of the Council establishing a Community Code on the rules governing the movement of persons across the borders²⁰
 - (...)
 - the officers acting on the territory of another Member State shall be easily identifiable, either by their uniform, by means of an armband or by accessories fitted to their vehicles; the use of civilian clothes combined with the use of unmarked vehicles without the aforementioned identification is prohibited; the officers must at all times be able to prove that they are acting in an official capacity; **the officers may carry their service weapons save where specifically otherwise decided by the host Member State; their use and the use of other, less serious means of force shall be prohibited save in cases of legitimate self-defence, as defined by the law of the host Member State.**

¹⁹ Proposal to replace the heading of this paragraph with the following text: "When the criminality rate or a specific situation of risk in a border region requires it to meet the objectives set out in Article 1(2), cooperation shall include:"

²⁰ OJ L [...], [...], p. [...].

- x) conducting joint surveillance operations in border regions to pursue the objective and purpose of Article 1, it being understood that the officers carrying out the surveillance must at all times be able to prove that they are acting in an official capacity; **the officers may carry their service weapons during the surveillance save where specifically otherwise decided by the host Member State; their use and the use of other, less serious means of force shall be prohibited save in cases of legitimate self-defence, as defined by the law of the host Member State**
 - b) (deleted)
 - c) assigning police competencies to officers of other Member States which, on invitation of the **host** Member State, are on missions relating to public order maintenance; such competencies must be exercised in compliance with the laws of the **host** Member State and under the leadership of an officer of this Member State.
- 2. Officers operating in the territory of another Member State shall be regarded as officers of that Member State with respect to offences committed against them or by them.
 - 3. In case of damage caused by officers operating in the territory of another Member State, the provisions of Article 43 of the Schengen Convention shall apply.
 - 4. (...)

Article 6

Cooperation arrangements or structures

- 1. ²¹ Member States shall establish, (...), permanent cooperation arrangements or structures between the authorities covered by this Decision in the border region.

²¹ **Proposal to insert "where appropriate". Proposal to delete the word "permanent" before "cooperation arrangements or structures".**

2. Without prejudice to the competences of the central national authorities, the permanent cooperation arrangements or structures referred to in paragraph 1 shall contribute to the implementation of Articles 4 and 5. The permanent cooperation arrangements or structures shall ensure that the central national authorities receive the appropriate information about their activities in order to guarantee the necessary overview.
3. Member States shall make all relevant information, in particular information related to the strategic coordination activities as referred to in Article 4, available to the **authorities participating in the** permanent cooperation arrangements or **to the permanent** structures referred to in paragraph 1.
4. Member States shall inform (...) the Council of the assignments and competencies of the permanent cooperation structures referred to in paragraph 1. This information **shall be brought** together in a report on a regular basis.

Article 7

Data protection

Any exchange of information that takes place pursuant to this Decision shall be subject to compliance with the relevant legal provisions concerning data protection and data security as laid down in Title VI of the Schengen Convention.

Article 8

Evaluation of implementation

1. (deleted)
2. No later than three years after this Decision has taken effect, the Council shall assess the extent to which the Member States have complied with this Decision, and take the appropriate measures.

Article 9

Bi- and multilateral agreements on cooperation between Member States concerning the authorities covered by this Decision

- 1. Member States may continue to apply bilateral or multilateral agreements or arrangements in force when this Decision is adopted in so far as such agreements or arrangements allow the objectives of this Decision to be extended or enlarged between Member States on cross-border cooperation between the authorities covered by this Decision.**
- 2. Member States may conclude or bring into force bilateral or multilateral agreements or arrangements after this Decision has come into force in so far as such agreements or arrangements allow the objectives of this Decision to be extended or enlarged between Member States on cross-border cooperation between the authorities covered by this Decision.**
- 3. The agreements and arrangements referred to in paragraphs 1 and 2 may in no case affect relations with Member States which are not parties to them.**
- 4. Member States shall inform the Council and the Commission of the agreements or arrangements referred to in paragraphs 1 and 2.**

Article 10

Committee

(deleted)

Article 11
*Amendments to the **provisions of the** Schengen Convention*

1. **The provisions of Article 40 of the Schengen Convention²² shall be replaced by the following:**

"1. Officers of one Member State who are keeping a person under surveillance in their country as part of a criminal investigation into a criminal offence punishable by the law of that Member State²³ by a custodial sentence or a detention order for a maximum period of at least 12 months, because he is suspected of involvement in such an offence or, as a necessary part of a criminal investigation, because there is serious reason to believe that he can assist in identifying or tracing such a person, shall be authorised to continue their surveillance in the territory of another Member State (...), where the latter has authorised cross-border surveillance in response to a request for assistance made in advance with supporting reasons. Conditions may be attached to the authorisation.

On request, the surveillance will be entrusted to officers of the Member State in whose territory this is carried out.

The request for assistance referred to in the first subparagraph must be sent to an authority designated by each of the Member States and empowered to grant or to pass on the requested authorisation.

²² **OJ L 239 of 22.9.2000, p. 19, as last amended by Council Decision 2003/725/JHA of 2 October 2003, OJ L 260 of 11.10.2003, p. 37.**

²³ Suggestion that in this scenario, there should be verification of the dual criminality of the act. Suggestion that the offence should be "*punishable by the law of the Member State in whose territory the surveillance is to be continued.*"

2. Where for particular urgent reasons, prior authorisation cannot be requested from the other Member State, the officers carrying out the surveillance shall be authorised to continue beyond the border the surveillance of a person suspected of involvement in criminal offences listed in paragraph 7²⁴, or, as a necessary part of a criminal investigation, because there is serious reason to believe that he can assist in identifying or tracing such a person, provided that the following conditions are met:

- (a) the authority of the Member State designated under paragraph 5, in whose territory the surveillance is to be continued, must be notified immediately, during the surveillance, that the border has been crossed;
- (b) a request for assistance submitted in accordance with paragraph 1 and outlining the grounds for crossing the border without prior authorisation shall be submitted immediately.

Surveillance shall cease as soon as the Member State in whose territory it is taking place so requests, following the notification referred to in (a) or the request referred to in (b) or, where authorisation has not been obtained, five hours after the border was crossed.

3. The surveillance referred to in paragraphs 1 and 2 shall be carried out only under the following general conditions:

- (a) The officers carrying out the surveillance must comply with the provisions of this Article and with the law of the Member State in whose territory they are operating; they must obey the instructions of the competent local authorities.

²⁴ **Proposal to use the list of Article 2(2) of the EAW Framework Decision and, as a consequence, to delete paragraph 7.**

- (b) Except in the situations outlined in paragraph 2, the officers shall, during the surveillance, carry a document certifying that authorisation has been granted.
- (c) The officers carrying out the surveillance must at all times be able to prove that they are acting in an official capacity.
- (d) The officers carrying out the surveillance may carry their service weapons during the surveillance save where specifically otherwise decided by the requested Member State; their use **and the use of other, less serious means of force** shall be prohibited save in cases of legitimate self-defence, as defined by the law of the Member State in whose territory the surveillance is taking place.
- (e) Entry into private homes and places not accessible to the public shall be prohibited.
- (f) **The officers carrying out the surveillance may neither challenge nor arrest²⁵ the person under surveillance save in cases of legitimate self-defence until the officers of the Member State in whose territory the surveillance is taking place are able to establish the person's identity or make an arrest.**
- (g) All operations shall be the subject of a report to the authorities of the Member State in whose territory they took place; the officers carrying out the surveillance may be required to appear in person.

²⁵ Proposal to make it optional for Member States to allow this or not.

(h) The authorities of the Member State from which the surveillance officers have come shall, when requested by the authorities of the Member State in whose territory the surveillance took place, assist the enquiry subsequent to the operation in which they took part, including judicial proceedings.

4. Each Member State shall state in a declaration **referred to in Article 12 of Council Decision 2006/XXX/JHA** which are the officers **and the authorities** referred to in paragraphs 1 and 2. Any such declaration may be modified at any time.

5. **(deleted)**

6. The Member States may, at bilateral level or at a multi-lateral level, extend the scope of this Article and adopt additional measures in application thereof.

7. The surveillance referred to in paragraph 2 may only be carried out where one of the following criminal offences is involved: ²⁶

- **offences under national law which correspond to or are equivalent to those referred to in Article 2(2) of the Framework Decision of 13 June 2002 on the European arrest warrant²⁷**

²⁶ **Proposal for the following wording for paragraph 7:**
"In a declaration referred to in Article 12 of Council Decision 2006/XXX/JHA, the Member States shall define the offences referred to in paragraph 2 in accordance with one of the following procedures:

(a) The following criminal offences

- offences under national law which correspond to or are equivalent to those referred to in Article 2(2) of the Framework Decision of 13 June 2002 on the European arrest warrant
- a serious offence of a sexual nature;
- breach of the laws on arms and explosives;
- wilful damage through the use of explosives;
- [money laundering]
- [manslaughter]
- aggravated, organised or armed burglary or robbery and receiving stolen goods;
- illicit transportation of toxic and hazardous waste;

(b) Criminal offences punishable by the law of the Member State whose officers are carrying out the surveillance by a custodial sentence or a detention order for a maximum period of at least 12 months."

²⁷ OJ L 190 of 18.7.2002, p. 1.

- a serious offence of a sexual nature;
- breach of the laws on arms and explosives;
- wilful damage through the use of explosives;
- [money laundering]
- [manslaughter]
- aggravated, organised or armed burglary or robbery and receiving stolen goods;
- illicit transportation of toxic and hazardous waste;

2. The provisions of Article 41 of the Schengen Convention²⁸ shall be replaced by the following:

"1. Officers of one Member State who are pursuing a person in their country caught in the act of committing or participating in one of the offences ²⁹ referred to in paragraph 4³⁰ shall be authorised to continue pursuit in the territory of another Member State without the latter's prior authorisation where, given the particular urgency of the situation, it is not possible to notify the competent authorities of the other Member State by one of the means provided for in Article 44 of the Schengen Convention prior to entry into that territory or where these authorities are unable to reach the scene in time to take over the pursuit.

The same shall apply where the person being pursued has escaped from provisional custody or while serving a sentence involving deprivation of liberty.³¹

²⁸ **OJ L 239 of 22.9.2000, p. 19, as last amended by Council Decision 2000/586/JHA of 28.9.2000, OJ L 248 of 3.10.2000, p. 1.**

²⁹ Suggestion that there should be no limitation on the penalty threshold.

³⁰ **Proposal to use the list of Article 2(2) of the EAW Framework Decision and, as a consequence, to delete paragraph 4.**

³¹ **Proposal to extend the personal scope of this provision to persons who act suspiciously AND flee for a police check.**

The pursuing officers shall, not later than when they cross the border, contact the competent authorities of the Member State in whose territory the hot pursuit is to take place. The hot pursuit will cease as soon as the Member State in whose territory the pursuit is taking place so requests. At the request of the pursuing officers, the competent local authorities shall challenge the pursued person in order to establish the person's identity or to make an arrest.

2. Hot pursuit shall be carried out in accordance with one of the following procedures, defined by the declaration laid down in **Article 12 of Council Decision 2006/XXX/JHA** :

- (a) The pursuing officers shall not have the right to apprehend the pursued person.
- (b) If no request to cease the hot pursuit is made and if the competent local authorities are unable to intervene quickly enough, the pursuing officers may detain the person pursued until the officers of the Member State in whose territory the pursuit is taking place, who must be informed immediately, are able to establish the person's identity or make an arrest.

3. Hot pursuit shall be carried out in accordance with paragraphs 1 and 2 and in one of the following ways as defined by the declaration provided for in **Article 12 of Council Decision 2006/XXX/JHA**:

- (a) in an area or during a period as from the crossing of the border, to be established in the declaration;
- (b) without limit in space or time.

- 3a. (a)** Hot pursuit shall be carried out in accordance with paragraphs 1, 2 and 3 and in one of the following ways as defined by the declaration provided for in Article 12 of Council Decision 2006/XXX/JHA:
- (i) exclusively by land and waterway;**
 - (ii) without limitation to the kind of border.**
- (b)** When the pursuit takes place on the sea, it shall, where it extends to the high sea or the exclusive economic zone, be carried out in conformity with the international law of the sea as reflected in the United Nations Convention on the Law of the Sea, and, when it takes place in the territory of another Member State, *without having transited through the High Seas*, it shall be carried out in accordance with the provisions of this Article.³²
- (c)** Where hot pursuit is carried out by air, authorisation within the meaning of Article 3(c) of the Convention of 7 December 1944 on International Civil Aviation shall be deemed to have been obtained. Hot pursuit shall be carried out in accordance with the rules of the air applicable in each Member State.
- 4.** In the declaration referred to in Article 12 of Council Decision 2006/XXX/JHA, the Member States shall define the offences referred to in paragraph 1 in accordance with one of the following procedures:
- (a)** The following criminal offences³³:
 - offences under national law which correspond to or are equivalent to those referred to in Article 2(2) of the Framework Decision of 13 June 2002 on the European arrest warrant³⁴**

³² Suggestion that an additional reference should be added concerning Article 111(6) of the United Nations Convention on the Law of the Sea (UNCLOS).

³³ **Proposal to add " a serious offence of a sexual nature" in this list.**

³⁴ OJ L 190 of 18.7.2002, p. 1.

- breach of the laws on arms and explosives;
- wilful damage through the use of explosives;
- [manslaughter];
- aggravated or organised or armed burglary or robbery and receiving stolen goods;
- illicit transportation of toxic and hazardous waste;
- failure to stop and give particulars after an accident which has resulted in death or serious injury.

(b) Criminal offences punishable by the law of the Member States whose officers are pursuing the person by a custodial sentence or a detention order for a maximum period of at least 12 months.

5. Hot pursuit shall be carried out only under the following general conditions:

(a) The pursuing officers must comply with the provisions of this Article and with the law of the Member State in whose territory they are operating; they must obey the instructions issued by the competent local authorities.

(b) **(deleted)**

(c) Entry into private homes and places not accessible to the public shall be prohibited.

(d) The pursuing officers shall be easily identifiable either by their uniform, by means of an armband or by accessories fitted to their means of transport; the use of civilian clothes combined with the use of unmarked means of transport without the aforementioned identification is prohibited; the pursuing officers must at all times be able to prove that they are acting in an official capacity.

(e) The pursuing officers may carry their service weapons; their use shall be prohibited save in cases of legitimate self-defence, **[as defined by the law of the Member State in whose territory the pursuit is taking place]**.

- (f) Once the pursued person has been apprehended as provided for in paragraph 2(b), for the purpose of being brought before the competent local authorities that person may only be subjected to a security search; handcuffs may be used during the transfer; objects carried by the pursued person may be seized.
- (g) After each operation referred to in paragraphs 1, 2 and 3, the pursuing officers shall appear before the competent local authorities of the Member State in whose territory they were operating and shall report on their mission; at the request of those authorities, they shall remain at their disposal until the circumstances surrounding their action have been sufficiently clarified; this condition shall apply even where the hot pursuit has not resulted in the arrest of the person pursued.
- (h) The authorities of the Member State from which the pursuing officers have come shall, when requested by the authorities of the Member State in whose territory the hot pursuit took place, assist the enquiry subsequent to the operation in which they took part, including judicial proceedings.
- (i) **(deleted)**

6. A person who, following the action provided for in paragraph 2, has been arrested by the competent local authorities may, whatever that person's nationality, be held for questioning. The relevant rules of national law shall apply *mutatis mutandis*.

If the person is not a national of the Member State in whose territory the person was arrested, that person shall be released no later than six hours after the arrest was made, not including the hours between midnight and 9.00 a.m., unless the competent local authorities have previously received a request for that person's provisional arrest for the purposes of extradition in any form whatsoever.

7. Each Member State shall state in a declaration **referred to in Article 12 of Council Decision 2006/XXX/JHA** which officers are referred to in the previous paragraphs. Any such declaration may be modified at any time.
8. For the Member States concerned this Article shall apply without prejudice to Article 18 of the Benelux Treaty of 8 June 2004 on cross-border police intervention.
9. **(deleted)**
10. The Member States may, on a bilateral basis or on a multi-lateral basis, extend the scope of paragraph 1 and adopt additional provisions in implementation of this Article.”

Article 12

Final provisions

1. **Within three months after the publication of this Decision, each Member State shall make the declarations referred to in subparagraph 4 of the provisions of Article 40 of the Schengen Convention, as amended pursuant to Article 11 (1) of this Decision and subparagraphs 2, 3, 3a, 4 and 7 of the provisions of Article 41 of the Schengen Convention, as amended by Article 11(2) of this Decision to the General Secretariat of the Council.**
2. **A Member State may at any time replace its declaration by another declaration provided the latter does not restrict the scope of the former.**
3. **Each declaration shall be made after consultation with each of the Member States concerned and with a view to obtaining equivalent arrangements on both sides of internal borders.**
4. **Acceding Member States shall make the declarations referred to in paragraph 1 within 3 months after their accession.**
5. **The General Secretariat of the Council shall publish the declarations referred to in paragraph 1 in the Official Journal of the European Communities.**

Article 13

Date of effect

This Decision shall take effect six months after the date of its publication in the *Official Journal of the European Union*.

Done at Brussels,

For the Council

The President