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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

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Rapporteur: Herbert Reul

1. Introduction

The European Commission adopted in July 2005 a “proposal for a Council Decision on the improvement of police cooperation between Member States at the internal borders and amending the Convention implementing the Schengen Agreement.”

This fulfils the mandate of the Art. 29 of the TEU providing citizens with a high level of safety and answers the calls expressed by the European Council in the Hague Programme of 2004 to further develop the legislative framework in respect of operational cross border police cooperation.

The abolition of internal border controls within the Schengen area can allow criminals to move in impunity across borders if the law-enforcement services' intervention has to stop at the internal borders and if there is a lack of police cooperation between the Member States. This security deficit is most felt in border regions where the need for appropriate cooperation mechanisms is really acute.

2. Existing provisions in the area of the proposal

1. Besides the articles 29¹, 30², 34(2)(c)³ of the TEU, a considerable number of measures improving police co-operation between Member States have been adopted by the European Union in the past decade.

2. The Schengen Convention of 1990 introduced new forms of cooperation between police authorities of the Member States, liaison officers to coordinate the exchange of information, a right of pursuit and a right of observation across frontiers. Although considered very advanced at the time of their creation, notably by allowing cross-border enforcement operations, these mechanisms became rather outdated.

3. Bilateral agreements

The Schengen Convention limits itself to generalities, leaving details to Member States which are invited to conclude bilateral agreements between themselves.

An example of such successful agreements is the Agreement of Mondorf-les-Bains signed in 1997 by France and Germany creating a common Police and Customs Cooperation Centre that brings together officers from both countries under the same roof. The agreement also regulates the exchange of information, mutual assistance, training, liaison officers, surveillance, hot pursuit.

Several modern agreements have been concluded by the Member States in the last years and there is also a new Benelux treaty on police cooperation dating from the 8 June 2004. In these agreements hot pursuit and observation are no longer subject to limitations in time or space and officers are entitled to arrest offenders on foreign territory when caught in the act.

¹ common action in the field of police and judicial cooperation

² operational cooperation, exchange of information

³ authorises the Council to adopt Decisions concerning police cooperation

A Treaty on enhancing cross-border cooperation was also signed in May 2005 in Prüm between France, Austria, Germany, Spain, Luxembourg, the Netherlands and Belgium. This instrument will *inter alia* introduce far-reaching measures to improve information exchange.

4. Other achievements in the area of the proposal are:

- Europol;
- Task Force of EU Police Chiefs;
- European Police College;
- AGIS framework programme for co-operation between law-enforcement authorities;
- the Proposal for a Framework Decision on exchange of information under the principle of availability.

3. Current problems and solutions put forward by the proposal

1. Despite the progress, the overall picture of police cooperation in the EU shows a Europe of different speeds, with an untraceable number of intergovernmental agreements existing in parallel to union wide solutions.

Bilateral / multilateral agreements vary from region to region and thereby have led to different levels of security in the Schengen common area. Such distortions should be avoided.

The Schengen Convention's provisions are applied by the Member States in different ways so that the Council even issued a Catalogue of recommendations for the correct application of the Schengen acquis and best practices¹.

A key problem in the area of police cooperation is also the excessive proliferation of non binding measures as (handbooks, recommendations, etc) that are non existing measures in too many cases.

Many years after the formal incorporation of police cooperation into the EU we have not achieved a common approach in this area.

2. The proposal subsumes in a single Decision the common principles and practices that emerged over the past decade and brings transparency in the whole field, being therefore most welcomed by practitioners.

The Decision aims at providing for a general, common framework furthering future development in the field of cross-border police cooperation. It lays down common minimum standards, leaving the Member States decide if they want to go further in cross-border cooperation.

¹ doc 9788/01/03 SCH-EVAL 40 COMIX 328 rev 1, 16 June 2003

Legislation at the European level: Member States have a joint responsibility for the security of the Union, conceived as an area of freedom, security and justice and cannot manage its security in isolation, because of the permeability of the borders. Moreover, the amendment of the Schengen Convention can only be done at the EU level.

4. Content of the proposal

Article 1 describes the purpose of the Decision: improving the information exchange between law-enforcement authorities, the coordination of strategic, operative and operational activities.

Article 2 gives definitions:

“Border region” is an area to be defined by the Member States, with a limit fixed to 50 km from the border. The “Authorities covered by this Decision” are mainly the police and the customs.

Article 3 provides for a non-exhaustive list of areas in which information exchange shall be improved, reflecting the current best practices and the existing bilateral agreements.

Article 4 remedies to the lack of strategic approach in the police cooperation field.

The accent is put on:

- operational planning and activities,
- examination of compatibility and interoperability of equipment,
- training.

Article 5 foresees operational cooperation: joint patrols, joint interventions, surveillance operations, etc.

Article 6 imposes to the Member States the establishing of permanent cooperation structures.

Article 7 provides for data protection by applying the standards of Title VI of the Schengen Convention.

Article 8 foresees regular bilateral evaluations carried out by Member States in border regions and evaluation reports submitted by the Commission the Council.

Article 9 allows more detailed present or future agreements consistent with this Decision.

In order to assist the Commission, **the Article 10** establishes a Regulatory Committee composed of representatives of the Member States and chaired by a representative of the Commission.

Article 11 amends the provisions of the Schengen Convention concerning cross-border surveillance (Art. 40) and cross-border hot pursuit (Art. 41).

When practitioners apply the Art. 40 and the Art. 41 of the Schengen Convention, they currently have to use several lists:

- a list of “extraditable criminal offences”,
- a list of criminal offences of the Art. 40, paragraph 7,
- a list of offences of the Art. 41 paragraph 4(a).

The proposal replaces the reference to these lists by the reference to a single notion of “criminal offence for which a custodial sentence or a detention order for a maximum period of at least 12 months is possible”, thereby facilitating practitioners' work and increasing the effectiveness of police operations.

Art. 40 - cross border surveillance

Officers of a Member State may continue a surveillance operation initiated in their own country across the borders of another Schengen State, subject to strict conditions.

The person under surveillance must be suspected of involvement in an extraditable criminal offence or must be believed being able to assist in finding such a person.

The proposal replaces the notion of “extraditable criminal offence” by the notion of “criminal offence for which a custodial sentence or a detention order for a maximum period of at least 12 months is possible”

Furthermore, in order to carry out an "emergency" surveillance, the observed person must be presumed to have committed criminal offences listed in Art. 40, paragraph 7. The proposal replaces this list with the same notion of “criminal offences for which a custodial sentence or a detention order for a maximum period of at least 12 months is possible”.

Art. 41- hot pursuit

Officers pursuing a person in their country may continue pursuit on the territory of a neighbour state without prior authorisation subject to strict conditions.

Concerning the offences giving rise to pursuit, states can choose between two options:

- A restrictive list of offences listed in § 4(a)
- the extraditable offences.

Instead of these options the proposed Art. 41 retains the notion of “criminal offence for which a custodial sentence or a detention order for a maximum period of at least 12 months is possible”.

Finally, the new Art. 41 suppress the limitation of pursuit only over land borders also allowing it over sea, waterway or air borders.

5. Views of the Rapporteur

The Rapporteur welcomes the Commission’s wish to improve cross border police cooperation

and to replace the numerous existing measures and agreements with a general common framework.

The present proposal lays down common minimum standards. The Rapporteur is aware of the existence of different levels of sensibility and Constitutional traditions among the Member States in the field of police cooperation. However, in order to ensure the citizens' security, he calls for a high level of harmonisation and for a broader revision of the Schengen Convention going beyond the proposal of the Commission.

He also reminds some difficulties currently faced by the police:

- the linguistic barrier, major obstacle to cross border cooperation. Language trainings are essential;
- the difficulty of communication between officers of different states. Therefore, the creation of Police and Customs Cooperation Centres bringing together agents from both countries under the same roof should be encouraged;
- the incompatibility of communication and surveillance equipment;
- the absence of a harmonised situation as regards the rights of the pursuing officers in neighbour country. Each State is now free to restrict these rights in time, space, powers. The Rapporteur pleads for common rules as regards the rights of the pursuing agents and for the right to arrest persons in the country where the pursuit is taking place.
- the insufficiency of the budget and of the adequate equipment allocated to police.