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DRAFT REPORT

on the 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
(COM(2005)0317 – C6-0314/2005 – 2005/0131(CNS))

Committee on Civil Liberties, Justice and Home Affairs

Rapporteur: Herbert Reul

Symbols for procedures

- * Consultation procedure
majority of the votes cast
- **I Cooperation procedure (first reading)
majority of the votes cast
- **II Cooperation procedure (second reading)
*majority of the votes cast, 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 except in cases
covered by Articles 105, 107, 161 and 300 of the EC Treaty and
Article 7 of the EU Treaty*
- ***I Codecision procedure (first reading)
majority of the votes cast
- ***II Codecision procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- ***III Codecision procedure (third reading)
majority of the votes cast, to approve the joint text

(The type of procedure depends on the legal basis proposed by the Commission.)

Amendments to a legislative text

In amendments by Parliament, amended text is highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). These suggested corrections are subject to the agreement of the departments concerned.

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the 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 (COM(2005)0317 – C6-0314/2005 – 2005/0131(CNS))

(Consultation procedure)

The European Parliament,

- having regard to the Commission proposal (COM(2005)0317)¹,
 - having regard to Articles 30(1)(a), (b), (c), 32 and 34(2)(c) of the Treaty of the European Union,
 - having regard to Article 39(1) of the EC Treaty, pursuant to which the Council consulted Parliament (C6-0314/2005),
 - having regard to Rules 93 and 51 of its Rules of Procedure,
1. Approves the Commission proposal as amended;
 2. Calls on the Commission to alter its proposal accordingly, pursuant to Article 250(2) of the EC Treaty;
 3. Calls on the Council to notify Parliament if it intends to depart from the text approved by Parliament;
 4. Calls on the Council to consult Parliament again if it intends to amend the Commission proposal substantially;
 5. Instructs its President to forward its position to the Council and Commission.

Text proposed by the Commission

Amendments by Parliament

Amendment 1 RECITAL 5

(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

(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 exist, as can be derived from the

¹ OJ C ... / Not yet published in OJ.

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.

recommendations issued by the Ministers on the basis of the reports of the Standing Committee on the evaluation and implementation of the Schengen Convention. ***A common approach is therefore essential in order to ensure the same level of security throughout the territory of the European Union.***

Amendment 2
RECITAL 11

(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.

(11) Forms of operational cooperation should be established in order to increase the joint availability of resources, ***in particular human, financial and technical resources***, the efficiency of their deployment, and the effectiveness of the handling of routine tasks as well as of special situations.

Amendment 3
RECITAL 11 A (new)

(11a) In order to improve strategic and operational cooperation it is necessary to overcome all the obstacles in terms of training, linguistic differences and incompatibility and non-interoperability of technical equipment.

Justification

Training plays a key role in the creation of a culture of trust and cooperation among different cross-border law-enforcement agencies. The linguistic barrier and the deployment of non-compatible equipment (databases and communication systems) were identified until now as major obstacles to cross-border cooperation.

Amendment 4
RECITAL 13

(13) The regulatory procedure provided for in Article 10 of this Decision should be followed as regards measures of general scope designed to apply the provisions of Article 3 as for instance the development of standard technical solutions and formats for the transmission of information. **deleted**

Justification

The establishment of such a Committee is not necessary as the Council already has competent bodies at its disposal for developing implementation measures on police cooperation.

Amendment 5
RECITAL 14

(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.

(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 ***a custodial sentence or a detention order for a maximum period of at least 12 months*** is possible. Cross-border hot pursuit should be over ***not only*** land borders ***but also air, sea, river and lake borders. The pursuing officers should have the right to stop, search, question and arrest the pursued persons. Furthermore, cross-border surveillance and cross-border hot pursuit should not be subject to any limitation in time or space. Any incompatible constitutional provisions of the Member States should therefore be amended.***

Justification

The Decision aims at facilitating practitioners' work and increasing the effectiveness of police operations. Therefore, the agents' powers should be increased and the surveillance and hot pursuit should not be restricted in time or space. This amendment is inspired from the current best practices of the different Schengen States.

Amendment 6 ARTICLE 3, PARAGRAPH 1, POINT (D)

(d) identification of telecommunications subscribers (telephone, fax and internet);

(d) identification of telecommunications subscribers (telephone, ***mobile telephone***, fax and internet);

Amendment 7 ARTICLE 3, PARAGRAPH 1, POINT (F)

(f) identification of persons;

(f) identification of persons, ***notably through transmission and comparison of DNA profiles***;

Justification

This amendment aims at taking advantage of the latest technologies in the field of identification of persons.

Amendment 8 ARTICLE 3, PARAGRAPH 3

3. Any further detailed rules necessary for the implementation of this Article, relating to the definition of information that can be made available, the modalities for access and the channels for exchange shall be adopted in accordance with the regulatory procedure referred to in Article 10.

deleted

Justification

The establishment of such a Committee is not necessary as the Council already has competent bodies at its disposal for developing implementation measures on police cooperation.

Amendment 9

ARTICLE 4, PARAGRAPH 1, POINT (C)

(c) the development and implementation of joint training schemes, including common special situation exercises. ***Action in this area may consist of*** work visits, exchange programmes, common schooling projects, ***including*** language training, ***and the development of*** common education modules ***in relation to cooperation in a specific border region.***

(c) the development and implementation of joint training schemes, including common special situation exercises. ***Action to enhance cooperation between internal border regions, such as*** work visits, exchange programmes, common schooling projects, common education modules ***and especially*** language training, ***are necessary.***

Justification

The importance of common training actions in the creation of a culture of trust and cooperation among different law-enforcement agencies and of abolishing linguistic barriers has unanimously been recognised.

Amendment 10

ARTICLE 5, POINT (C)

c) assigning police tasks to liaison officers or to officials of the other Member State ***insofar as these tasks do not include the application of coercive measures.***

c) assigning police tasks to liaison officers or to officials of the other Member State.

Amendment 11

ARTICLE 5, PARAGRAPH 1 A (new)

1a. The officers engaged in operational cooperation, as referred to in paragraph 1, may stop, search, question and arrest individuals on the territory of the other Member State, in compliance with the laws of that State and with the instructions of the competent local authorities.

Justification

The powers of the agents acting on the territory of another Member State should be increased in order to enhance the effectiveness of police operations.

Amendment 12
ARTICLE 6, PARAGRAPH 1

1. Member States shall establish ***permanent cooperation structures*** between the authorities covered by this Decision ***in each of the border regions at the internal borders.***

1. Member States shall establish ***common centres for cooperation*** between the authorities covered by this Decision.

Justification

The success of the existing Police and Customs Cooperation Centres such as the one linking German and French authorities and located in Kehl (Germany), shows that bringing together agents from different countries under the same roof encourages in a significant way cooperation and communication.

Amendment 13
ARTICLE 9, TITLE

Bilateral agreements on cooperation between the authorities covered by this Decision

Bilateral ***and multilateral*** agreements on cooperation between the authorities covered by this Decision

Amendment 14
ARTICLE 9, PARAGRAPH 1

This Decision shall not preclude ***more detailed*** present or future agreements ***consistent with*** this Decision between Member States with a common border on cooperation between the authorities covered by this Decision.

This Decision shall not preclude present or future agreements ***that enable the objectives of*** this Decision ***to be extended or broadened*** between Member States with a common border on ***cross-border*** cooperation between the authorities covered by this Decision.

Article 10

deleted

The Committee

- 1. Where reference is made to this Article, the Commission shall be assisted by a Committee composed of the representatives of the Member States and chaired by the representative of the Commission.*
- 2. The Committee shall adopt its rules of procedure based on the standard rules of procedure for comitology committees.*
- 3. The representative of the Commission shall submit to the Committee a draft of the measures to be taken. The Committee shall deliver its opinion on the draft within a time limit which the chairman may lay down according to the urgency of the matter. The opinion shall be delivered by the majority laid down in Article 205(2) of the Treaty establishing the European Community, in the case of decisions which the Council is required to adopt on a proposal from the Commission. The votes of the representatives of the Member States within the Committee shall be weighted in the manner set out in that Article. The chairman shall not vote.*
- 4. The Commission shall adopt the measures envisaged if they are in accordance with the opinion of the Committee.*
- 5. If the measures envisaged are not in accordance with the opinion of the Committee, or if no opinion is delivered, the Commission shall, without delay, submit to the Council a proposal relating to the measures to be taken and shall inform the European Parliament thereof.*
- 6. The Council may act by qualified majority on the proposal, within two months from the date of referral to the Council.*

If within that period, the Council has indicated by qualified majority that it opposes the proposal, the Commission shall re-examine it. It may submit an amended proposal to the Council, resubmit its proposal or present a legislative proposal.

If on the expiry of that period the Council has neither adopted the proposed implementing act nor indicated its opposition to the proposal for implementing measures, the proposed implementing act shall be adopted by the Commission.

7. The representatives of the Member States are designated from the authorities responsible for the implementation of this Decision Each Member State shall designate one representative.

Justification

The establishment of such a Committee is not necessary as the Council already has competent bodies at its disposal for developing implementation measures on police cooperation.

Amendment 16
ARTICLE 11, POINT -1 (new)
Article 39, paragraph 1 (Schengen Convention)

-1. In Article 39, the first paragraph is replaced by the following:

"1. The Contracting Parties undertake to ensure that their police and customs authorities shall, in compliance with national law and within the scope of their powers, assist each other for the purposes of preventing and detecting criminal offences, in so far as national law does not stipulate that the request has to be made and channelled via the judicial authorities. Where the requested police authorities do not have the power to deal with a request, they shall forward it to the competent authorities."

Justification

The article 39 of the Schengen Convention is amended in order to:

- include in the provision the customs authorities;*
- allow measures of constraint by the agents acting in another Member State if this is needed for preventing and detecting criminal offences.*

Amendment 17

ARTICLE 11, POINT 1, POINT (B)

Article 40, paragraph 2, subparagraph 1 (Schengen Convention)

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 ***presumed to have committed criminal offences*** for which a custodial sentence or a detention order for a maximum period of at least 12 months is possible, provided that the following conditions are met.

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 a criminal offence*** for which a custodial sentence or a detention order for a maximum period of at least 12 months is possible, ***or of a person for which there is serious reason to believe that he can assist in identifying or tracing such a person***, provided that the following conditions are met.

Justification

As the notion "presumed to have committed criminal offences" is considered too restrictive by practitioners the article 40 of the Schengen Convention is amended in order to allow the surveillance of persons suspected of involvement in a criminal offence and of persons who might assist in investigations.

Amendment 18

ARTICLE 11, POINT 1, POINT (B A) (new)

Article 40, paragraph 3, point (f) (Schengen Convention)

(ba) In paragraph 3, point (f) is replaced by the following:

"(f) The officers carrying out the surveillance may stop, search, question and arrest the person under surveillance on the territory of the other Member State."

Justification

The amendment aims at providing the agents carrying out surveillance on the territory of another Member State with the powers they need in order to be efficient.

Amendment 19

ARTICLE 11, POINT 2, POINT (A)

Article 41, paragraph 1, subparagraph 1 (Schengen Convention)

Officers of one Member State who are pursuing a person in their country ***caught in the act of committing or participating*** in a criminal offence for which a custodial sentence or a detention order for a maximum period of at least 12 months is possible, 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.

1. Officers of one Member State who are pursuing a person in their country ***suspected of involvement*** in a criminal offence for which a custodial sentence or a detention order for a maximum period of at least 12 months is possible, ***or of a person for which there is serious reason to believe that he can assist in identifying or tracing such a person***, 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.

Justification

As the notion "caught in the act of committing or participating in a criminal offence" does not cover all the situations to which practitioners are confronted to, this amendment intends to allow the hot pursuit of persons suspected of involvement in a criminal offence and of those who might assist in investigations.

Amendment 20

ARTICLE 11, POINT 2, POINT (B)

Article 41, paragraph 4 and paragraph 5, point (b) (Schengen Convention)

(b) **Paragraph 4** and **paragraph 5(b)** are deleted.

(b) **Paragraphs 2, 3, 4 and 5(b)** are deleted.

Justification

This amendment aims at abolishing the current possibility of the Member States to have different procedures as regards the powers of the officers acting in another state and the limit in time or space of the hot pursuit.

Amendment 21

ARTICLE 11, POINT 2, POINT (B A) (new)

Article 41, paragraph 5, point (f) (Schengen Convention)

(ba) In paragraph 5, point (f) is replaced by the following:

“(f) The officers carrying out the hot pursuit may stop, search, question and arrest the pursued person on the territory of the other Member State. Once the pursued person has been apprehended, for the purpose of being brought before the competent local authorities, handcuffs may be used during the transfer and objects carried by the pursued person may be seized.”

Amendment 22

ARTICLE 11, POINT 2, POINT (B B) (new)

Article 41, paragraph 9 (Schengen Convention)

(bb) Paragraph 9 is deleted.

EXPLANATORY STATEMENT

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."

A first exchange of views took place within the Committee on Civil Liberties, Justice and Home Affairs on the 24 January 2006 and a working document was distributed.

2. Aim of the proposal

The abolition of internal border controls within the Schengen area can allow criminals to move in impunity across borders and can result in a security deficit if the law-enforcement services' intervention has to stop at the borders and if there is a lack of police cooperation between the Member States.

The purpose of the present proposal is to develop the legislative framework in the cross border police cooperation field and to provide citizens with a higher level of safety, as required by the Art. 29 of the TEU and the Hague Programme of 2004.

The proposal introduces a general, common framework at the European level in the field of cross border police cooperation. It subsumes in a single Decision the common principles and practices that emerged over the past decade bringing transparency in the whole field.

Solutions to the following current problems are put forward:

- absence of a common approach in the cross border police cooperation area;
- existence of a Europe of different speeds, with different levels of security throughout Europe;
- existence of numerous bilateral and multilateral agreements varying from region to region;
- the Schengen Convention's provisions are obsolete and are applied in different ways;
- excessive proliferation of non binding measures such as handbooks or recommendations.

3. Content of the proposal and views of the Rapporteur

The Rapporteur welcomes the Commission's wish to improve cross border police cooperation and to replace the numerous existing measures 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 this field. 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.

Article 1 of the proposal 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 agreements such as the Prüm Convention signed in May 2005 between France, Austria, Germany, Spain, Luxembourg, the Netherlands and Belgium. In this context, the Rapporteur points out that an agreement has recently been reached within the Council on the "Framework Decision on exchange of information under the principle of availability". Although this Decision is not subject of this consultation, it is interesting to mention it.

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.

The Rapporteur would also like to insist on the importance of common training actions in the creation of a culture of trust and cooperation among officers of different countries and of abolishing all the linguistic barriers.

Article 5 foresees operational cooperation: joint patrols, joint interventions, joint surveillance operations, etc. When officers of a Member State conduct such cooperation activities, in order to be efficient, they should have the right to stop, search, question and arrest individuals on the territory of the other Member State.

Article 6 imposes to the Member States the establishing of permanent cooperation structures. This article is inspired from the success of the existing Common Police and Customs Cooperation Centres such as the one created by France and Germany in 1997 which brings together officers from both countries under the same roof.

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 for present or future agreements consistent with this Decision and aiming at further improving the cooperation between the authorities covered by this Decision.

In order to assist the Commission, the **Article 10** establishes a Regulatory Committee. Given that the Council already has competent bodies at its disposal for developing implementation measures on police cooperation, the Rapporteur considers that the establishment of such a Committee is not necessary.

Article 11 amends the provisions of the Schengen Convention concerning cross border surveillance (Art. 40) and cross border hot pursuit (Art. 41). In order to be coherent, the Rapporteur also proposes an amendment to the Art. 39 of the Schengen Convention. This article is amended in order to:

- include the customs authorities within the provision;
- allow measures of constraint by the agents acting in another Member State if this is needed for preventing and detecting criminal offences.

- **Content of the Art. 40 – cross border surveillance**

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

2) Authorised surveillance

Present situation: 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.

Proposal: The outdated notion of “extraditable criminal offence” is replaced 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*”

3) Emergency surveillance, without prior authorisation:

Present situation: The observed person must be presumed to have *committed* one of the criminal offences *listed* in Art. 40, paragraph 7.

Proposal: The reference to this list is replaced with the concept of “criminal offences for which a custodial sentence or a detention order for a maximum period of at least 12 months is possible”.

Rapporteur: The notion “presumed to have *committed* (...)” is too restrictive and does not cover all the cases to which practitioners are confronted. The surveillance should be authorised on persons suspected of *involvement* in a criminal offence (...) and on persons who can *assist* in the investigations.

Moreover, in order to increase the efficiency of the police operations, the officers carrying out the surveillance should be able to stop, search, question and arrest the person under surveillance on the territory of the other Member State. Indeed, the right to continue surveillance in a neighbour state is totally useless if the officers do not have the right to stop, search, question and arrest the person under surveillance.

- **Content of the Article 41- hot pursuit**

Principle: Given the urgency of the situation, officers pursuing a person in their country may continue pursuit on the territory of a neighbour state without prior authorisation subject to strict conditions.

Present situation: Concerning the *offences giving rise to pursuit*, Member States can choose between two options:

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

Proposal: Instead of these options the proposal retains the 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”.

In addition, the limitation of pursuit only over land borders is suppressed so the pursuit can also take place over sea, waterway or air borders.

Rapporteur: The proposal allows hot pursuit only on persons “*caught in the act of committing or participating in a criminal offence (...)*” The Rapporteur considers that this notion is too restrictive and does not cover all the cases where a right of pursuit is needed. The pursuit should also be allowed on persons suspected of *involvement in a criminal offence (...)* and on persons who can *assist* in the investigations.

Moreover, in order to increase the efficiency of the police operations, the officers carrying out a hot pursuit should be able to stop, search, question and arrest persons on the territory of the other Member State.

- **Requests of the Rapporteur as regards Art. 40 and 41**

1. In case of surveillance and hot pursuit, practitioners currently have to use several lists of offences. The Commission’s proposal replaces the reference to these different lists by the reference to a single notion of “criminal offence for which a custodial sentence (...)”. This facilitates practitioners' work and is very welcomed by the Rapporteur.

2. In order to increase the efficiency of police operations, the Rapporteur insists on the necessity to grant the officers acting in the territory of a neighbour state with the right to stop, search, question and arrest persons. This is also foreseen by some modern bilateral / multilateral agreements.

3. The Rapporteur would like to allow emergency surveillance and hot pursuit not only on persons presumed to have committed / participated in a criminal offence, but also on persons suspected of involvement in a criminal offence and on persons who can assist in the investigations.

4. The right to survey and to pursue should not anymore be limited in time or space.

4. Conclusion

The proposed Decision will have a visible, practical impact on people’s life.

In the current context of debate on the future of the Union and of loss of confidence in the European institutions and decision-making process, we should take this opportunity to send a strong signal to citizens. The EU is taking into account their needs and wishes and is trying to offer them a more secure environment. The Member States will hopefully show us that they are capable of working together for citizens' security and that they are willing to abandon part of their traditional sovereign powers in order to create a true area of freedom, security and justice.