COMMISSION OF THE EUROPEAN COMMUNITIES

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2005/0131(CNS)

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

(presented by the Commission)

EXPLANATORY MEMORANDUM

1) CONTEXT OF THE PROPOSAL

- **Grounds for and objectives of the proposal**

The proposal for a Council Decision on the improvement of cooperation at the internal borders of Member States of the European Union is mentioned in the Legislative and Working Programme of the Commission (CLWP) for 2005, ref. IRMS 2004/JLS/036 since it was already mentioned in the CLWP for 2004.

In the Hague Programme of 4 November 2004, the European Council invites the Commission to bring forward proposals to further develop the Schengen-acquis in respect of operational cross border police cooperation, and in its Declaration on combating terrorism of 29 March 2004, it had instructed the Council, among other things, to examine measures in the area of "cross-border hot pursuit" and called for further development of the legislative framework.

- **General context**

The Treaty of Amsterdam made the progressive establishment of an area of freedom, security and justice a new goal of the Union.

Free movement of persons within that area requires action to counter security deficits caused by the abolition of border controls, as perpetrators of criminal acts are equally able to move as freely as law abiding citizens. Impunity caused by obstacles to cooperation must be removed.

In border regions the impact of the permeable coexistence of different jurisdictions is most felt in everyday police work. The need for appropriate cooperation mechanisms is therefore most acute in those regions, i.e. to address the security challenges exceeding those existing elsewhere in the Union. Although each region is unique, as regards demography, geography and prosperity, similarities in cooperation needs permit to develop a common framework to tackle the obstacles to cooperation, coordination of activities and information exchange. If this common framework fails, the different practices and rules for detection, investigation and prosecution of crimes with cross-border implications will thwart law enforcement and lead to distortions in security.

To meet these challenges, and in the absence of a general framework, Member States concluded bilateral agreements between themselves. The Schengen Convention limits itself to generalities, leaving details to Member States. However, the situation that emerged, the experience gained and the demands made to the EU level, require to legislate on basic common principles, to improve existing mechanisms and provide for structures that further development.

Among the structures that emerged, some have proven to be extremely efficient, such as the permanent cooperation centres that bring the local law enforcement stakeholders at both sides at the border under one roof.

- **Existing provisions in the area of the proposal**

The Tampere Council Conclusions of 1999 provided for details on the normative and, to a lesser degree, operational underpinnings to the area of freedom, security and justice that were introduced by the Treaty on European Union, i.e. the Treaty of Amsterdam of 1997.

The 1998 Vienna Action Plan[1], that remains valid under the Amsterdam Treaty, called for extension of cross-border cooperation, like the establishment of permanent cooperation structures in the form of Joint Police Stations and Police and Customs Cooperation Centres at internal borders.

The Schengen Convention of 1990 that was incorporated into the EU framework by the Treaty of Amsterdam, provides for the abolition of border controls while at the same time reinforcing control measures at the external borders. To off set security deficits caused by the abolition of border controls new mechanisms were introduced to enable and promote police cooperation.

In the Hague Programme of 5 November 2004, the European Council invites the Commission to come up with proposals to further develop the Schengen acquis in respect of operational cross border police cooperation.

- **Consistency with other policies and objectives of the Union**

This Decision is consistent with the policies for the progressive establishment of the area of freedom, security and justice.

2) CONSULTATION OF INTERESTED PARTIES AND IMPACT ASSESSMENT

- **Consultation of interested parties**

No specific consultations were necessary. The conclusions that such consultations could have provided exist in the context of previous and ongoing activities at EU level (research, Council groups and other European forums dealing with police cooperation). They had consistently flagged the issues that are dealt with in the Decision as structural cross-border framework needs. The most important sources that were used are (1) the Communication from the Commission to the European Parliament and the Council on enhancing police and customs cooperation in the European Union (COM(2004)376 final) of 18.05.2004, in which context the Commission has consulted the law enforcement authorities of the Member States, and was based a) on extensive research, and b) the results of the Schengen Evaluation process over the years 2000-2004 ; (2) the Catalogue of recommendations for the correct application of the Schengen acquis and best practices: part on Police Co-operation (doc 9788/01/03 SCH-EVAL 40 COMIX 328 rev 1 of 16 June 2003), that contained concrete recommendations by the law enforcement authorities for improvements in the field covered by the current proposal ; (3) the outcome of discussions in the European Chiefs of Police Task force on reinforcing police cooperation in the areas at the common borders ; (4) the conclusions of the seminar "Policing without frontiers", held in The Netherlands in March 2004.

[1] OJ C 19 of 23.1.1999, p. 1.

- **Collection and use of expertise**

Not applicable.

- **Impact assessment**

As regards impact on fundamental rights, it should be emphasised that the direct aim of the Decision is to contribute to the implementation of Articles 2 and 3 of the Charter of Fundamental Rights which state that everyone has the right to life and physical integrity; it does this by promoting cross border law enforcement cooperation while respecting the different legal traditions and systems of the Member States as well as other fundamental rights and principles recognised by the Charter. Furthermore, the processing of data is protected in accordance with Article 8 of the Charter.

3) LEGAL ELEMENTS OF THE PROPOSAL

- **Summary of the proposed action**

The Decision provides for a transparent, common framework within which cross-border police cooperation, especially at the common borders, is carried out and can further develop. To that end, the Decision lays down general rules to promote strategic and operational cooperation between law enforcement authorities, and in doing so work towards fulfilling the mandate of Article 29 TEU, i.e. to provide the citizens of the European Union with a high level of safety. More specifically, this aim is met by (a) strengthening and improving information exchange on all matters concerning cooperation between law enforcement authorities; (b) taking joint action in the coordination of strategic and operative activities on a permanent basis; (c) taking joint action in carrying out operational activities, (d) extending existing cross-border capabilities and (e) providing oversight and cooperation structures to further future development. This Decision does not affect the abolition of internal border checks as laid down in Article 2 of the Schengen Convention.

- **Legal basis**

The legal basis for the proposal is provided by Articles 30(1)(a), (b), (c), 32 and 34 (2)(c) TEU. Under Article 5(1) of the Protocol integrating the Schengen acquis into the framework of the European Union, proposals and initiatives to build upon the Schengen acquis are subject to the relevant provisions of the Treaties.

- **Subsidiarity principle**

The subsidiarity principle applies as the proposal does not fall under the exclusive competence of the European Union.

The objectives of the proposal cannot be sufficiently achieved by the Member States for the following reasons:

The aim of the proposal is to bring out in a transparent framework the common principles for law enforcement cooperation that apply across the Union. This will promote law enforcement at an equivalent high level, and avoid distortions because of discrepancies detrimental to the security of citizens. This objective can -as a matter of fact- not be achieved by Member States acting alone. In addition to this the amendment of the Schengen Convention achieved by the Decision can not be attained by Member States acting alone.

Member State can not manage its security in isolation, because of the permeability of the borders, but also because of the interdependency of their law enforcement communities. The resulting joint responsibility for the security of the Union, conceived as an area of freedom, security and justice, in general and for each other's security in particular require instruments

like the current Decision. The proposal brings the different forms and features that came into being since the entry into force of the Schengen Convention under one transparent framework. Failing this law enforcement practice in the different parts of the Union, and with that, the level of security of citizens, risk to develop in an uneven manner.

Action on the level of the Union will better achieve the objectives of the proposal for the following reasons.

The Decision lays down "general rules to promote strategic and operational cooperation" between the Member States' law enforcement authorities, and increases "the level of security of the citizens of the European Union". The Decision subsumes in a transparent framework furthering future development, the common cross-border cooperation principles and practices that emerged in the course of the last decade in the context of Schengen and of the last five years in the context of operation of the area of freedom, security and justice. The concept of the area of freedom, security and justice in Article 61 TEC and 29 TEU requires a common policy on, inter alia, cross-border security cooperation because of the interdependence of the national law enforcement activities. The proposal seeks to attain a balance between consolidation of practice, facilitation of cooperation, and joint development of operational practice. In this respect, the sovereign responsibilities of Member States are respected, for instance the selection of means and the decision of the law enforcement strategies, whilst providing common pathways for cooperation if deemed necessary.

Qualitative evaluation of cross-border law enforcement cooperation is the hallmark of the Schengen Evaluation process. In that context, consensus exist that respect of commonly agreed upon principles is required to achieve an equivalent high level of security through the area of freedom, security and justice, so as to avoid shifts in crime patterns and negative collateral effects for national security. At the same time, all Member States agree that the respect of common principles must leave sufficient margin for Member States to decide autonomously to what extent they engage in cross-border cooperation and leave it to the unfolding operational reality. To achieve that balance but also to improve the quality of and capabilities for cooperation, experience gained over the past decade is subsumed in the current Decision. The Decision feeds the development back into common cooperative structures and in doing so it supports the fruition of best practice and continuous improvement. The project-driven programmes sponsored by Commission (AGIS), or the peer review organised under the aegis of the Council, point towards the need for such common principles and practices.

The proposal brings transparency in the developments over the past decade, provides for the infrastructures to improve cooperation, coordination and information exchange, and leave it to Member States to decide autonomously to what extent they engage in cross-border cooperation, tailored to the needs of the unfolding operational reality. It ensures, however that if Member States decide to engage in cooperative activities, they do so on the basis of common standards. It also provides for common oversight and review mechanisms to adjust the processes and permit transparent evolution. The amendment of Articles 40 and 41 of the Schengen Convention need to be done on EU level.

The proposal therefore complies with the subsidiarity principle.

- **Proportionality principle**

The proposal complies with the proportionality principle for the following reasons.

The proposal provides for common principles and structures for cooperation, leaving the operational aspects to the discretion of Member States. The proposal does not interfere with the national responsibility to provide citizens with security, nor with the competence to

organise law enforcement in a way that is deemed appropriate to connect with national practice. At the same time, the proposal avoids that the application of the subsidiarity principle entails disparities that are detrimental to societal security needs, or to the operation of the area of freedom, security and justice. For that reason, it is sufficient and adequate to lay down common minimum standards with regard to the presence of sufficient law enforcement capabilities in border regions to address crime in an equivalent manner.

Additional costs, estimated at 202.500 Euro annually, will arise in the context of the Regulatory Committee, set up under this Decision. Economic operators or citizens, although beneficiaries of the cooperation brought about by this instrument, are not concerned by the operation of this Decision.

- **Choice of instruments**

The instrument chosen is a Decision based on Article 34 (2) (c) of the Treaty on European Union. Other means would not be adequate for the following reasons:

Refraining for legislation would fall short of the ambitions expressed in the Hague Programme. Besides it would fail to bring out the common operational elements that underlie the diverse bi- and multilateral cooperation instruments. Legislation containing stricter or more detailed rules would ignore the differences that exist at the borders in terms of demography, geography and organisational idiosyncrasies.

Regulatory alternatives (subsidising multilateral law enforcement projects, handbooks, catalogues of best practices, peer review) already exist, but they have shown not to be sufficient to provide the framework of common cooperative principles. The improvement of cross-border cooperation that the Decision brings out was requested by the Hague Programme.

4) BUDGETARY IMPLICATION

An estimated total annual amount of 202.500 Euro have to be incurred on the EU budget for human resources and administrative expenditures, in the context of the meetings of the Regulatory Committee set up by this Decision, that lays down the tasks of the Committee. At the beginning of its activities, until such time as the proposals contained in the Decision have become operational, the Committee will have to meet more frequently and will need more intensive administrative support to find solutions, for example, in the context of the drafting of model agreements, creation of common structures and evaluation aspects. The Regulatory Committee should meet regularly, estimated twice a year, to discuss what planning and measures need to be taken in order to implement Article 3 of the Council Decision on improved police and customs cooperation. These meetings will have to be organised and hosted by the Commission.

5) ADDITIONAL INFORMATION

- **Repeal of existing legislation**

The adoption of the proposal will lead to the repeal of existing legislation.

- **Detailed explanation of the proposal**

Article 1 describes the object and purpose, i.e. to increase the level of security of citizens through the promotion of operational and strategic cooperation between police and customs services, in particular at the internal borders of the Schengen Area. It provides for the general structure of measures with regard to improved cooperation.

Article 2 defines key terminology.

Article 3 builds on Article 39 of the Schengen Convention and the Decisions of the Executive Committee of 16 December 1998 and of 28 April 1999 providing for a non-exhaustive list of areas in which information-exchange shall be improved.

Article 4 (coordination) lists the particular law enforcement activities in border regions that should be subject of coordination and the conditions for the facilitation of the coordination function. It also deals with deployment of non-compatible equipment that was identified as a major obstacle to cross-border cooperation.

Article 5 lists operational cooperation techniques, such as assigning tasks to liaison officers or to officials of other Member States. The measures described will assist in making efficient use of available resources.

Article 6 entails an obligation to establish permanent cooperation structures in border regions.

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

Article 8 provides for regular peer evaluations and invites the Commission to submit evaluation reports to the Council.

Article 9 defines the relation of the proposal to bilateral agreements or treaties.

Article 10 establishes a Regulatory Committee composed of representatives of the Member States and chaired by the Commission.

Article 11 amends Article 40 paragraphs (1), (2) and (7) (observation) and broadens the scope and removes the limitation to land borders as foreseen in Article 41 (hot pursuit) of the Schengen Convention.

Article 12 lists the Schengen Acquis to be repealed in the light of the proposal.

Article 13 sets out the periods for the application of the proposal.

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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 Commission[2],

Having regard to the opinion of the European Parliament[3],

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 1998[4] 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.

(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/JHA[5].

(4) The Convention of 1990 implementing the Schengen Agreement of 14 June 1985 on the gradual abolition of checks at common borders[6] (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

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2 OJ C […], […], p. […].
3 OJ C […], […], p. […].
4 OJ C 19, 23.1.1999, points 42 and 44(b).
5 OJ L 162, 20.6.2002, p.1.
6 OJ L 239, 22.9.2000, p.19.

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 Union[7], 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.

(7) The programme adopted by the European Council at its meeting of 4 and 5 November 2004 in The Hague, invites the Commission present proposals to further develop the Schengen *acquis* in respect of cross border operational police cooperation. The Programmes 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 standardisation, 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) A comprehensive exchange of information has been unanimously identified as a fundamental prerequisite to ensure the effectiveness of law enforcement cooperation. For the purpose of a coherent application of Article 39 of the Schengen Convention it is necessary to determine which types of information could be directly exchanged between law enforcement authorities of the Member States to prevent and detect criminal offences, without having to make or channel the request via the judicial authorities.

(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 and special situation exercises (i.e. handling of kidnapping, hostage-taking, or demonstrations).

(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.

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[7] COM(2004)376 final of 18 May 2004.

(12) Permanent structures for exchange of information should be established in order to promote cooperation and coordination, and to monitor the underlying processes.

(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.

(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 point 2of 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 11points 1 and 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 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) This Decision is without prejudice to the arrangements for the United Kingdom and Ireland's partial participation in the Schengen *acquis*, as defined in Decision 2000/365/EC and 2002/192/EC, respectively.

(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 Agreement[8].

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[8] OJ L 176, 10.7.1999, p. 31.

(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/EC[9] on the signing, on behalf of the European Union, and on the provisional application of certain provisions of that Agreement.

(21) This Decision constitutes an act building on the Schengen *acquis* or otherwise related to it within the meaning of Article 3(1) of the 2003 Act of Accession, except for the Article 11 of this Decision for which the provisions of Article 3(2) of the 2003 Act of Accession apply.

(22) This Decision respects the fundamental rights, and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union,

HAS DECIDED AS FOLLOWS:

Article 1
Subject-matter

1. This Decision lays down general rules to promote strategic and operational cooperation between the authorities covered by this Decision as defined in Article 2, in particular at the internal borders, and to increase the level of security of the citizens of the European Union, by:

   (a) strengthening and improving information exchange on all matters concerning cooperation between the authorities covered by this Decision;

   (b) taking joint action in the coordination of strategic and operative activities on a permanent basis;

   (c) taking joint action in carrying out operational activities.

2. Member States sharing a common border shall intensify cooperation in particular in border regions in order to:

   (a) prevent, detect and investigate any type of crime originating in or having a particular impact on the level of security of border regions;

   (b) prevent threats to public order and internal security, and address disturbances to public order;

   (c) promote the security of cross-border road, water, rails and air traffic when under the responsibility of authorities covered by this Decision;

   (d) assist each other to prevent, and combat criminal offences that cause or are likely to cause emergencies, calamities or serious accidents;

[9] OJ L 368 of 15.12.2004, p. 26.

(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 that is not or not sufficiently provided for in the general curriculum of the European Police College (CEPOL).

3. This Decision does not affect the abolition of internal border checks as laid down in Article 18 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 borders[10].

Article 2
Definitions

For the purpose of this Decision:

a) "Internal borders" shall have the meaning given by Article 1 of the Schengen Convention.[11]

b) "Border region" means an area to be defined as such by the Member States, but which in any event comprises all the territory of a Member State within a maximum distance from the border of 50 kilometres.

c) "Authorities covered by this Decision" mean the police, customs and other authorities operating under Title VI of the Treaty on European Union, with the exception of judicial authorities.

Article 3
Information exchange

1. For the purpose of applying Article 39 of the Schengen Convention, assistance shall be given and information shall be transmitted on request by the police authorities of the Member States, in particular in the following areas:

(a) identification of vehicle owners and drivers, including ships and aircraft;

(b) (driving licence enquiries, including those relating to ships and aircraft;

(c) tracing whereabouts and residence;

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

(e) obtaining information from the persons concerned by the police on a voluntary basis;

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10 OJ L […], […], p. […].

11 [PM: may have to be revised in the context of the adoption of the Regulation contained in the Communication COM(2004)391final on the rules of the movement of persons across borders]

(f) identification of persons;

(g) transmission of criminal intelligence from databases or files controlled by the authorities covered by this Decision subject to compliance with the relevant provisions governing data protection;

(h) preparation of plans and coordination of search measures and the initiation of emergency searches ;

(i) tracing the origins of goods, particularly weapons and vehicles, for instance, by tracing sales channels;

(j) examination of evidence, for instance, vehicle damage after hit and run accidents, and erasures in documents;

(k) examination of national official documents;

(l) organisation of operational actions involving cross-border surveillance and pursuit, controlled deliveries and covert operations;

(m) local criminal groups or individuals and their modus operandi.

2. The information referred to in paragraph 1 may also be transmitted on the own initiative of the providing service to any authority concerned which is covered by this Decision.

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.

Article 4
Structural coordination

1. Without prejudice to the competencies of judicial authorities, Member States shall coordinate cross-border activities of the authorities covered by this Decision in border regions.

This coordination shall include in particular:

(a) the preparation, harmonization and implementation of operational planning and activities, e.g. surveillance operations, searches, and crime prevention measures, including management of public demonstrations and the respective resources scheduling;

(b) the examination of compatibility and interoperability of equipment, in particular communication and surveillance technology;

(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.

2. To facilitate the coordination of activities of the authorities covered by this Decision in border regions, Member States shall in particular:

(a) keep those authorities and the permanent cooperation structures mentioned in Article 6(1) informed on their own initiative 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 on the other side of the border;

(b) draw up common risk assessment and situation reports;

(c) keep those authorities on the other side of the border abreast of administrative and organisational developments that can have an impact on the performance of those authorities ;

(d) make all relevant information available to the permanent cooperation structures within the meaning of Article 6(1) of this Decision;

(e) share all relevant operational information with those authorities and with the permanent cooperation structures mentioned in Article 6(1), in particular by updating the Handbook on cross-border police cooperation adopted by the Decision of the Executive Committee of 16 December 1998[12].

Article 5
Operational cooperation

Operational cooperation shall, in particular, consist of:

a) conducting joint patrols, as well as joint intervention and surveillance operations in border regions to pursue the objective and purpose of Article 1, it being understood that these patrols are carried out in accordance with Article 19 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 borders[13];

b) providing assistance in the establishment of joint investigation teams in border regions set up in accordance with Council Framework Decision 2002/465/JHA[14];

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.

Article 6
Information exchange and coordination structures

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.

2. The cooperation structures referred to in paragraph 1 shall support and monitor the implementation of Articles 3, 4 and 5.

3. Member States shall inform the Commission and the Council of the assignments and competencies of the permanent cooperation structures set up pursuant to this Article.

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12 OJ L 239, 22.9.2000, p. 408.
13 OJ L […], […], p. […].
14 OJ L 162, 20.6.2002, p. 1.

The Commission shall bring this information together in a report on a regular basis. The Handbook referred to in Article 4(2)(e) shall be updated if necessary in accordance with the procedure foreseen to that effect.

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. Member States shall carry out bilateral evaluations in border regions at regular intervals to assess the level of cooperation achieved, in order to determine whether adjustments are necessary and where cooperation can be improved within the context of this Decision. They shall inform the Council and the Commission of the results of the evaluations.

2. On the basis of the evaluations referred to in paragraph 1, the Commission shall, no later than three years after this Decision has taken effect, submit a report to the Council on the operation of this Decision. The Council shall assess the extent to which the Member States have complied with this Decision, and take the appropriate measures.

Article 9
Bilateral agreements on cooperation between the authorities covered by this Decision

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.

Member States shall inform the Council and the Commission of such agreements.

Article 10
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.

Article 11
Amendments to the Schengen Convention

The Schengen Convention is amended as follows:

1. Article 40 is amended as follows:

(a) In paragraph 1, the first subparagraph is replaced by the following:

”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 for which a custodial sentence or a detention order for a maximum period of at least 12 months is possible, 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.”

(b) In paragraph 2, the first subparagraph is replaced by the following:

”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.”

(c) Paragraph 7 is deleted.

2. Article 41 is amended as follows:

(a) In paragraph 1, the first subparagraph is replaced by the following:

”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.”

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

Article 12
Final provisions

Section 1 of the principles governing police cooperation in preventing and investigating criminal offences as set out in the Presidency’s note doc. SCH/I (98) 75 rev 5 of 28 April 1999, approved by the Decision of the Executive Committee of 28 April 1999 on the improvement of police cooperation in preventing and detecting criminal offences (SCH/Com-ex (99)18) is repealed.

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

LEGISLATIVE FINANCIAL STATEMENT

Policy area(s): Justice and Home Affairs
Activit(y/ies): 1806 – Establishing a genuine area in criminal and civil matters

TITLE OF ACTION: PROPOSAL FOR A COUNCIL DECISION ON THE IMPROVEMENT OF POLICE COOPERATION AT THE INTERNAL BORDERS OF THE MEMBER STATES OF THE EUROPEAN UNION

1. BUDGET LINE(S) + HEADING(S)

NA

2. OVERALL FIGURES

2.1. Total allocation for action (Part B): € million for commitment

NA

2.2. Period of application:

NA (starting 2006)

2.3. Overall multiannual estimate of expenditure:

(a) Schedule of commitment appropriations/payment appropriations (financial intervention) *(see point 6.1.1)*

€ million (*to three decimal places)*

	[2006]	[2007]	[2008]	[2009]	[2010]	[2011]	Total
Commitments							
Payments							

(b) Technical and administrative assistance and support expenditure *(see point 6.1.2)*

Commitments							
Payments							

Subtotal a+b							
Commitments							
Payments							

(c) Overall financial impact of human resources and other administrative expenditure *(see points 7.2 and 7.3)*

Commitments/ payments	0.202	0.202	0.202	0.202	0.202	0.202	0.202

TOTAL a+b+c							
Commitments							
Payments							

2.4. Compatibility with financial programming and financial perspective

NA

2.5. Financial impact on revenue:

Proposal has no financial implications

3. BUDGET CHARACTERISTICS

Type of expenditure		**New**	**EFTA contribution**	**Contributions form applicant countries**	**Heading in financial perspective**
Non-comp	Non-diff	NA	NA	NA	**No** NA

4. LEGAL BASIS

Article 30(1)(a), (b) and (c) Article 32 and 34 (2)(c)TEU

5. DESCRIPTION AND GROUNDS

5.1. Need for Community intervention

5.1.1. Objectives pursued

The objective is to set up a comitology procedure for the improvement of police and customs cooperation at the internal borders of the Member States. Article 12 of the proposal stipulates that the Commission should be assisted by a Regulatory Committee composed of the representatives of the Member States and chaired by the representative of the Commission.

The preparation of a proposal for a Council Decision on improvement of police and customs cooperation at the internal borders between Member States of the European Union is mentioned in the Commission Legislative and Working Programme 2004 And 2005.

In its Declaration on combating terrorism of 25 March 2004, the European Council instructs the Council, among other things, to examine measures in the area of "cross-border hot pursuit" and calls for further development of the legislative framework.

5.1.2. Measures taken in connection with ex ante *evaluation*

The Regulatory Committee will have to fulfil its tasks on the basis of the Council Decision on the improvement of police cooperation at the internal borders and on the basis of the input provided by the Member States. At the beginning of its activities, until such time as the proposals contained in the Decision have become operational, the Committee will have to meet more frequently and will need more intensive administrative support to find solutions, for example, in the context of the drafting of model agreements, creation of common structures and evaluation aspects.

5.2. Action envisaged and budget intervention arrangements

The Regulatory Committee should meet regularly, estimated twice a year, to discuss what planning and measures need to be taken in order to implement Article 3 of the Council Decision on improved police and customs cooperation. These meetings will have to be organised and hosted by the Commission

5.3. Methods of implementation

The Commission will have to invite the representatives of the Member states

6. FINANCIAL IMPACT

6.1. Total financial impact on Part B - (over the entire programming period)

6.1.1. Financial intervention

NA

6.1.2. Technical and administrative assistance, support expenditure and IT expenditure (commitment appropriations)

NA

6.2. Calculation of costs by measure envisaged in Part B (over the entire programming period)

NA

7. IMPACT ON STAFF AND ADMINISTRATIVE EXPENDITURE

The impact on staff and administrative expenditure will be covered in the context of allocation of ressouces of the lead DG in the context of the annual allocation procedure.

The allocation of posts also depends on the attribution of functions and resources in the context of the financial perspectives 2007-2013.

7.1. Impact on human resources

Types of post		Staff to be assigned to management of the action using existing and/or additional resources		Total	Description of tasks deriving from the action
		Number of permanent posts	Number of temporary posts		
Officials or temporary staff	A B C	1 B/0.5 A		1rst year: 1B 0.5 A	Gathering and processing of information, preparing the Committee meetings
Other human resources					
Total					

7.2. Overall financial impact of human resources

Type of human resources	Amount (€)	Method of calculation *

Officials Temporary staff	1rst year: 162 000	1 X 108 000 0.5 X 108 000 = 162 .00
Other human resources (specify budget line)		
Total	162.000	

The amounts are total expenditure for twelve months.

7.3. Other administrative expenditure deriving from the action

Budget line (number and heading)	Amount €	Method of calculation
Overall allocation (Title A7) A0701 – Missions A07030 – Meetings A07031 – Compulsory committees A07032 – Non-compulsory committees A07040 – Conferences A0705 – Studies and consultations Other expenditure (specify)	40.000	2 meetings* 27 * 740€
Information systems (A-5001/A-4300)		
Other expenditure - Part A (specify)		
Total	40.000	

The amounts are total expenditure for twelve months.

Specify the type of committee and the group to which it belongs.

I.	Annual total (7.2 + 7.3)	€202 500
II.	Duration of action	
III.	Total cost of action (I x II)	

8. FOLLOW-UP AND EVALUATION

8.1. Follow-up arrangements

The Committee will lay down its rules of procedure, including rules on confidentiality. The European Parliament will be informed analogous to Article 7 of Council Decision 99/468/EC of 28.6.1999 laying down the procedures for the exercise of implementing powers conferred on the Commission (OJ L 184, 17.7.1999, p. 23).

8.2. Arrangements and schedule for the planned evaluation

NA

9. ANTI-FRAUD MEASURES

NA.