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NOTE

from : Presidency
to : Police Cooperation Working Party

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Subject : Approach for enhancing the effective and efficient information exchange among
EU law enforcement authorities

I. Introduction

1. Citizens look towards the Member States' authorities for providing them with a European area of freedom, security and justice. It is not relevant to them how the competences are divided (and information distributed) between the different authorities to achieve that result. This duty that rests on Member States, and therefore in practice on all their authorities, obliges the authorities concerned to cooperate and share information.
2. It is in that framework that the "principle of availability" should be implemented. To be effective, this implies 2 steps: firstly, Member States authorities should be obliged to make relevant information available to their colleagues and secondly, Member States authorities should use the information made available.

3. The "principle of availability" is obviously not an absolute one; it is limited by data protection principles, such as proportionality. This implies that authorities throughout the European Union should obtain information *only if* but also *whenever* they need this to provide, in a legal way, the above-mentioned security to the citizens.

II. Conditions

4. This two-stranded implementation requires
 - on the one hand, the creation of a legal obligation to make information available, including provisions to observe the key conditions as set out in the Hague Programme
 - on the other hand, a very practical implementation that encourages law enforcement officers to use the information and guarantee an effective and efficient information exchange, which in itself will motivate further exchange.
5. For the first requirement, the categories of information to be exchanged should be defined, as well as the conditions under which they should be exchanged. The aim is obviously that as large a list of information categories as possible is exchangeable with as little effort as possible (i.e. requiring a minimum of formalities, permissions, procedures, if any). The categorisation of information should therefore not be based on where/by whom the information is held but rather on the nature of the information. It might require a substantial effort from (certain) Member States because of the national rules underlying the ownership and exchange of information. Nonetheless, this follows from the European Council's request (in the Hague Programme) to adopt an innovative approach to cross-border exchange of law enforcement information.
6. On the other hand, an efficient and effective exchange of information requires a solution that takes account of the practical issues such as language barriers, impossibility to know how to search all existing (national and foreign) databases, need to protect the sources of information, classification of information and access level to it, technical interoperability between existing systems etc.

Moreover, in order to avoid that this information exchange remains a mere theoretical possibility, the law enforcement authorities should be able to know, via a very user-friendly procedure, that the information is available. This first step should not take the officer an additional effort compared to national information exchanges.

III. Possible solution

7. A possible solution would be to create a very simple index at European level, which can be easily searched and "fed" by the national authorities. Such index would contain no more than
- the name and date of birth of the persons concerned
 - an identifying number for the objects concerned (vehicles, documents)
 - (possibly in future) fingerprints / digital photographs

A search on this index, which should be integrated with the search on national systems, would reveal whether or not information was available on the person/object concerned (hit/no hit), the owner (Member State / Europol / ...) of the information and the database concerned (IS / SIS / VIS / Eurodac / CIS / national).

In addition, the necessary procedures should be set up to follow up on this first hit/no hit answer. The officer receiving a positive reply from the index system should be able to contact the owner of the information in order to obtain it according to the relevant procedures. As mentioned in paragraph 5, this follow-up should be as simple as possible: no formalities / authorisations / permissions for a number of information categories should be aimed for. For some categories of information, a (semi-) automated procedure might be implemented to provide the follow-up information.

However, it is clear that for other categories of information, there will be more or less elaborate procedures in place: judicial authorisation where necessary, clearance, data protection checks, pre-defined channels for e.g. Europol information, SIS alerts etc.¹). It has to be examined whether this can best be done via the existing central authorities, whether it would be appropriate to (in the long term / at all) streamline the different information channels and/or whether more direct contacts should be organised.

¹ At this stage, the rules being discussed in the framework of the Swedish initiative for simplifying the exchange of information will apply.

8. The advantages of such a simple central index are that it avoids some practical but very important issues:
- language question (no need to translate information)
 - no need to know and be able to search all existing (national and European) databases
 - legal framework: possibility to differentiate procedures according to the different categories of information, including where necessary the option to keep existing procedures and checks (exchange pursuant to Article 39 Schengen Convention, mutual legal assistance, new rules following from the Swedish initiative)
 - no additional effort required from the end-user: integrated search
 - no need to make all relevant national and European information systems interoperable with each other, nor to set up national indexes
 - if an existing European database would be used, to which this index would be added: no need to create a new European database.
9. Access to this index should be widespread but not necessarily be extended to every single law enforcement officer of the EU. As stated above, the access should be given (and thus differentiated per user) on a need-to-know basis.

IV. Way forward

10. The current document clearly sets out an ambitious and long-term view for enhancing the information exchange between EU law enforcement authorities and the delegations are invited to reflect and comment on it.

If agreement would be reached along these lines, a lot of further work needs to be done to define:

- the data that Member States should send to this index system (list of concerned databases / data)
- the access rights to this system (within the law enforcement authorities but also other authorities²)

² E.g.: authorities responsible for issuing visas, examining visa applications, issuing residence permits, vehicle registration authorities

- the follow-up procedures to a positive reply
- the rules on the national central entry point
- the technical framework/infrastructure to be implemented

In addition, this should be accompanied by legislation concerning data protection.

11. Without prejudice to the discussion on the creation of an index, delegations are invited to agree to the following principles:

- **the JHA IT-systems should be widely accessible to the law enforcement authorities in order to combat terrorism and organised crime; to that end, the access modalities for the law enforcement authorities to Eurodac and the Customs Information System in particular will be examined (hit/no hit, direct access, access subject to judicial authorisation)**
- **law enforcement authorities have access to the national law enforcement data of all Member States, in particular to identification, DNA and fingerprint data, on a hit/no hit basis**
- **law enforcement authorities have a direct access to the national administrative systems of all Member States (e.g. registers on persons, including legal persons, vehicles, firearms, identity documents and drivers licences, as well as aviation and maritime registers).**
