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from : General Secretariat

to : Coreper/Council

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13942/1/08 CRIMORG 161 ENFOPOL 186 ENFOCUSTOM 89 COMIX 721
REV 1

Subject : Council Framework Decision 2006/960/JHA on simplifying the exchange of
information and intelligence between law enforcement authorities of the Member
States of the European Union
- draft Guidelines

1. On 18 December 2006, the Council adopted the *Framework Decision 2006/960/JHA on simplifying the exchange of information and intelligence between law enforcement authorities of the Member States of the European Union*.¹ Article 11(1) thereof stipulates that "*Member States shall take the necessary measures to comply with the provisions of this Framework Decision before 19 December 2008*".

¹ OJ L 386 of 29.12.2006, p. 89.

2. Member States experts have been consulted over the last year on practical and technical issues, regarding the implementation of the Framework Decision. Equally, so-called "road tests" have taken place with a view to preparing the concerned departments for the application of the new rules.
3. Resulting from these consultations and tests, a number of practical guidelines have been gathered, as well as information about national legislation and rules regarding available information that can be exchanged pursuant to the Framework Decision.²
4. The Ad Hoc Group on Information Exchange agreed on the main general part of the guidelines in its meeting of 3 November 2008, as set out in annex to this document. However, as national and EU preparations for the implementation are still on-going, the annexes to the guidelines will require further updating between now and the date of implementation of the Council Framework Decision in order to be of the best use to practitioners.
5. On 10 November 2008, Article 36 Committee agreed on the guidelines as set out in annex to document 15235/08 CRIMORG 180 ENFOPOL 213 ENFOCUSTOM 98 COMIX 784.
6. **Coreper is, therefore, requested to invite the Council to**
 - **endorse the guidelines as set out in annex to the current document**
 - **take note of the fact that these guidelines and their annexes will be completed before implementation of the Framework Decision on 18 December 2008 and will be updated whenever necessary, in particular when practical experience so requires.**

² See doc. 13942/1/08 CRIMORG 161 ENFOPOL 186 ENFOCUSTOM 89 COMIX 721 REV 1.

6. Delegations that have not yet done so are requested to submit urgently

- the official declarations to be submitted pursuant to the Framework Decision concerning the competent authorities, contacts in case of urgency and bi/multilateral agreements that remain in force, as well as
- the completed national fact sheets about information available and languages that can be used.

**FRAMEWORK DECISION (2006/960/JHA) OF 18 DECEMBER 2006 ON SIMPLIFYING
THE EXCHANGE OF INFORMATION AND INTELLIGENCE BETWEEN LAW
ENFORCEMENT AUTHORITIES OF THE MEMBER STATES OF THE
EUROPEAN UNION**

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³ The comments contained here are not binding and do not affect domestic legislation implementing the Framework Decision. Comments are merely recommendations. Authorities are, however, reminded of their obligation to interpret their national law in conformity with the Framework Decision (see the Pupino case in the European Court of Justice C-105/03).

0. Introduction

- The aim of this publication is to provide guidelines for the implementation of *Council Framework Decision 2006/960/JHA on simplifying the exchange of information and intelligence between law enforcement authorities of the Member States of the European Union* and should be adapted in the light of experience acquired, while supplying the competent authorities with specific information on how the forms attached to the Council Framework Decision should ideally be filled in.
- The Framework Decision aims to enhance the effective and expeditious exchange of information and intelligence between law enforcement authorities, which was too often hampered by formal procedures, administrative structures and legal obstacles.
- The Framework Decision does **not** purport to change the Member States' systems of investigation and intelligence gathering and does **not** aim to centralise all exchange of information and intelligence. However, the Decision implies an improvement of the existing ways of exchanging information and intelligence by setting rules on procedures, time limits and grounds for refusal, with the aim of simplifying the exchange.
- The Framework Decision should be used by law enforcement authorities for exchanging existing information and intelligence effectively and expeditiously **for the purpose of conducting criminal investigations or criminal intelligence operations**.
- In that context, Member States shall ensure that the **conditions for** providing information and intelligence to competent law enforcement authorities of **other Member States are not stricter than the conditions applicable at national level** for providing and requesting information and intelligence.
- This handbook may be updated in future as necessary in the light of practical experience and/or amendments to the Framework Decision.

1. Implementation of the Framework Decision in the EU Member States

1.1. Competent law enforcement authorities

In accordance with Article 2 (a) of the Framework Decision, a “competent law enforcement authority” covers

- a national police customs or other authority
- that is authorised by national law
- to detect, prevent and investigate offences or criminal activities and to exercise authority and take coercive measures in the context of such activities.

Agencies or units dealing especially with national security issues are **not** covered.

Member States shall state in a declaration which authorities are covered by the concept of "competent law enforcement authority".

The list of these authorities is set out in Annex IV.

1.2. List of information that can be transmitted pursuant to the Framework Decision

According to Article 2(d), “information and/or intelligence” covers the following two categories:

- any type of information or data which is held by law enforcement authorities
- any type of information or data which is held by public authorities or by private entities and which is available to law enforcement authorities without the taking of coercive measures.

Since the content of these categories depends on national legislation, some practical guidance is set out in the national fact sheets in Annex III. Without being limitative, these lists set out the type of information available to the Member States' authorities that can generally be provided pursuant to the Framework Decision.

With a view to a clear understanding of Article 1(5), it should be taken into account that "coercive measures" can be understood differently by Member States. Where appropriate, indications are given in the national fact sheets (see Annex III).

1.3 Contacts in the case of urgency

In accordance with Article 6(1) of the Framework Decision, exchange of information and intelligence applying the rules of the Framework Decision may take place via any existing channel of international law enforcement cooperation.

However, it was felt useful to draw up a list of contacts that can be used in case of urgency.

The details provided by Member States about these contacts are set out in Annex V.

2. Use of the Framework Decision

2.1 Channel of communication

Pursuant to Article 6 of the Framework Decision, the requesting Member State may choose between any of the existing channel for international law enforcement cooperation, the most important ones being currently:

- SIRENE
- ENU/EUROPOL Liaison Officer
- INTERPOL NCB
- Liaison officers
- Mutual administrative international customs assistance ("Naples II Convention")
- Bilateral cooperation channels

The requested Member State normally replies through the same channel used for the request. Where the requested Member State must for legitimate reasons reply through another channel, the requesting authority is informed of this change.

The choice of channel will be guided by the following criteria:

- subject
- requested country
- level of security/confidentiality required
- urgency

The *Manual of Good Practices concerning the International Police Cooperation Units at National Level* (document 7968/08 ENFOPOL 63 + COR 1), as approved by the Police Chiefs, includes the following proposed criteria for use of channels:

a) *geographical approach:*

- *nationality/residence/origin of person or object concerned is known and request concerns establishing details (address, phone number, fingerprints, DNA, registration, ...)*
- *nationality/residence/origin of person or object concerned is not known*

b) *thematic approach:*

- *Europol (organised crime, at least 2 MS, connection to AWF, need for joint approach)*
- *confidentiality / sensitivity*
- *channel used for previous related request*

c) *technical approach:*

- *IT-criteria: need of secure channels (BDL for intelligence and terrorism-related information) or technical compatibility (SIRPIT for fingerprints)*

d) *urgency*

- *urgency / proven speed of channel (in particular immediate risk for person's physical integrity, immediate loss of evidence, request for urgent cross border operation or surveillances)*
- *priority*

2.2. Requests in cases of urgency

As the notion of urgency is not defined in Framework Decision 2006/960/JHA, it seems advisable for all Member States to have a convergent approach to urgent requests so that this procedure, which places heavy demands on the requested State, is used in a balanced and reasonable manner. Also, Member States will ensure that the notion of “urgency” is interpreted in a restricted manner.

The following guidance is therefore offered to provide help in determining what circumstances may be deemed as “urgent”, but is not to be regarded as definitive. In any case, the question of whether a request is urgent shall be evaluated on a case-by-case basis, avoiding that it becomes a trite indication.

"Urgent" cases as referred to in Article 4 of Framework Decision 2006/960 can be understood to mean any situation during which the fact of obtaining information will:

- prevent a risk of death or harm to persons or serious damage to property;
- result in, or terminate, a decision involving deprivation of liberty (where such a decision has to be taken within a short period of time);
- prevent the loss of information that is important for the further stages of an investigation.

Examples of such situations would be:

- abductions and hostage-takings;
- the risk that a serious offence will be committed or repeated;
- the disappearance of minors, and the disappearance of adults giving cause for concern;
- decisions relating to the keeping a person in police custody, or remanding a suspect in custody or releasing a person;
- the possible escape of a suspect in a serious case;
- the need to obtain information at risk of imminent destruction.

2.3. Exchange with Europol

Care should be taken to copy Europol each time a request falls within Europol's mandate. In addition, the answer provided by the requested Member State should also be copied to Europol.

This principle has to be applied whatever the channel is chosen, including the Europol channel. In this respect, a difference has to be made between, on the one hand, the use of the Europol channel as a means of information exchange between Member States, using their liaison officers and, on the other hand, the direct communication to Europol, as an organisation, for any intelligence falling within its mandate.

3. Completion and transmission of forms

It is recommended to use the electronic version of the forms.

In Annex II, detailed guidelines are given on how to use certain boxes. These guidelines are not binding on Member States' authorities but carry a certain weight because they were drawn up by experts and reflect feedback given after a road test by several Member States.

4. Links to more information

See also Manual of good practices concerning the International Police Cooperation Units at National Level (doc. 7968/08 ENFOPOL 63 + COR 1) , as adopted by the Police Chiefs meeting on 19 March 2008).

