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NOTE

From: Presidency

To: Standing Committee on Operational Cooperation on internal Security
(COSI)

Subject: Commission Recommendation on proportionate police checks and police
cooperation in the Schengen area
- orientation debate

1. INTRODUCTION

The Commission Recommendation on proportionate police checks and police cooperation in the Schengen area suggests that police powers under national law can provide for similar results to the temporarily reintroduced controls at internal borders: for this reason, Member States should give precedence to police checks over static border controls temporarily reintroduced at internal borders. The Recommendation invited the Member States to adopt necessary measures in this regard at the latest within 6 months. Alongside removing obstacles in effective use of bilateral readmission agreements between Member States, this should be achieved especially through a more effective use of police checks and strengthening cross border police cooperation.

The effectiveness of police checks can be improved in particular by intensification, where needed and justified, of police checks across the entire territory, including in border areas of Member States, as well as their specific deployment on main transport routes. In the border areas the police checks should be based on continuous risk assessment. The Member States are also encouraged in this regard to make use of modern technologies.

As far as strengthening cross-border police cooperation is concerned, a few of the strands referred to in the Commission Recommendations have been developed by the Presidency and are set out below.

2. STRENGTHENING CROSS-BORDER POLICE COOPERATION

Joint patrols and other joint operations

Chapter 2 of Council Decision 2008/615/JHA (Prüm Decision) provides for the conditions and procedures of automated transfer of DNA profiles, dactyloscopic data and certain vehicle registration data. The implementation of the provisions of chapter 2 are regularly assessed by the Working Party on Information Exchange and Data Protection (DAPIX).

Chapter 5 of that Decision provides for the conditions and procedures for stepping up cross-border police cooperation by means of joint patrols and other joint operations in which designated officers from other Member States participate in operations within a Member State's territory. Member States, furthermore, may provide one another with mutual assistance in connection with mass gatherings and similar major events with a cross-border impact.

Probably due to the ad hoc character of these other forms of cooperation, the practical aspects of cooperation and the preparedness of Member States for such cooperation have not been the subject of discussions within any Council Working Party and are not known to the same extent as those of Chapter 2.

Police and Customs Cooperation Centres (PCCC)

Currently, 59 bi- or multilateral PCCCs exist, which assist competent law enforcement authorities through information exchange in cases affecting border regions. Improving the functioning of PCCCs is regularly discussed in the framework of the Information Management Strategy (IMS) within DAPIX in order to enhance their European dimension, in particular with regard to cases beyond petty crime. One of the issues at stake is the roll-out of SIENA. The Europol application is currently used by 8 PCCCs and, according to Europol, accounts for 10 % of messages exchanged in 2016. Another challenge regarding PCCCs is their ability to contribute to the analysis of threats to public policy or internal security in border regions.

Hot pursuits and other tools

The current legal framework under Article 41 of the Schengen Convention (CISA) is rather generic, as it merely sets the general framework and foresees that detailed rules be set via bilateral agreements and unilateral declarations of the States concerned. These agreements and declarations define *inter alia* distance or time limitations of the pursuit on host territory, rights of the pursuing officers concerning the apprehension, arrest or detention of the person pursued or the use of coercive measures (weapons, techniques of arrest).

Since further harmonisation of applicable rules at the level of CISA may be too ambitious a goal at this stage, possible ways forward may include enhanced training (such as in languages or on applicable legal regimes), regular contacts to build mutual trust and work on technical compatibility between the police forces involved (radio communication, use of GPS to trace intervening officers on host territory, etc.).

Also, wider use of joint patrols in border areas may be of particular relevance, as many of the obstacles mentioned above do not arise in presence of police forces from both (or possibly all three) Member/Associated states involved in a given incident.

3. WAY FORWARD

The Presidency invites delegations to agree on the following tasks to be allocated to the relevant Working Parties:

1. By end of September 2017, the Law Enforcement Working Party (LEWP) is invited to provide an overview of existing instruments based on the provisions of Chapter 5 of the Prüm Decision.
2. By end of September 2017, the Working Party on Information Exchange and Data Protection (DAPIX) is invited to map similar existing instruments based on other forms of cooperation between Member States (e.g. cooperation within BENELUX, such as Operation Etoile or Hazeldonk cooperation) and gather information from Member States, as to which legal or operational limitations prevent these forms of cooperation being based on the Prüm Decision.
3. By end of September 2017, DAPIX is invited to provide an assessment as to which PCCCs not yet connected to SIENA would benefit from such a connection, with a view of exploring solutions to technical or operational limitations before the end of June 2018
4. By end of September 2017, LEWP is invited to undertake the following actions:
 - Provide an update of the Manual on Cross-Border Operations (National Fact Sheets - 10505/4/09), as well as improve its lay-out and user friendliness
 - Explore possible enhancements to the practice of Hot pursuits with potentially relevant networks, such as the Radio Communications Expert Group and ENLETS
 - Explore possible training opportunities with CEPOL (language training, legal regimes in force)