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THE EUROPEAN UNION**

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**NOTE**

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From : incoming Danish Presidency

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To : Police Cooperation Working Party

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No. prev. doc. : SN 2753/02 ; OJ L 268, 19.10.1996, p.2

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Subject : Draft Council Decision regarding joint use of Member States' liaison officers  
- Explanatory note

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**1. Background**

At the meeting of the European Council in Vienna 11 – 12 December 1998, the Heads of State and Government approved a five-year action plan for the implementation of an area of freedom, security and justice. The action plan sets out a number of measures to be adopted within a two-year period and a five-year period respectively from the entry into force of the Amsterdam Treaty on 1 May 1999.

The European Council in Tampere 15 – 16 October 1999 furthermore decided on a number of political guidelines and priorities concerning the co-operation on justice and home affairs, including the implementation of the Vienna Action Plan from 1998.

At the European Council in Laeken 14 – 15 December 2001, the Heads of State and Government had an in-depth discussion on the results achieved regarding the implementation of the conclusions from the European Council in Tampere and set out further guidelines in relation to the implementation of the Tampere conclusions.

The Danish Presidency intends to continue the implementation of the Vienna Action Plan based on the political priorities and guidelines decided by the European Council and results achieved during previous presidencies.

The Joint Action of 14 October 1996 adopted by the Council on the basis of Article K.3 of the Treaty on European Union providing for a common framework for the initiatives of the Member States concerning liaison officers (96/602/JHA)<sup>1</sup> created a first basis for co-operation through liaison officers in third states.

The Swedish Presidency in the first half of 2001 introduced an initiative regarding joint use of Member States' liaison officers. The initiative has been dealt with in the Police Co-operation Working Group and is still pending. Two questionnaires have been answered by Member States.

The Europol Management Board has also begun discussions on how to make better use of Member States' liaison officers, e.g. by allowing Europol to make use of Member States' liaison officers posted to third states and external organisations.

Against this background, the incoming Danish Presidency in close co-operation with Europol and the Spanish Presidency organised an expert meeting in Copenhagen on 10 June 2002. At the meeting Member States, the Commission, and Europol had an in depth discussion on the results of the questionnaires and an exchange of views concerning the Danish proposal for a Council Decision regarding joint use of Member States' liaison officers.

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<sup>1</sup> OJ L 268 of 19.10.1996, p. 2

## 2. Purpose

In light of the experience in applying the Joint Action and of the provisions of the Treaty of Amsterdam on combating cross-border crime, co-operation on the posting of liaison officers to third states and international organisations needs to be strengthened and developed.

Furthermore, there is a need to strengthen parts of the co-operation between Member States' liaison officers in third states and international organisations in order to make the best possible use of Member States' resources.

In addition to this Europol has established and will continue to establish and maintain co-operative relations with a wide range of third states and external organisations.

In that connection, Europol needs to be given the necessary support and means to function effectively as the focal point of European police co-operation. The European Council has stressed that Europol plays a central role in co-operation between the authorities of the Member States in investigating cross-border crime by supporting the prevention, analysis and investigation of crime at EU-level.

Furthermore, Europol needs to be given the opportunity to make use, to some extent, of the Member States' liaison officers in third states and external organisations, so as to strengthen Europol's operative support capacity in relation to the national police authorities.

At the same time, co-operation between the Member States in this area needs to be strengthened so as to facilitate the exchange of information with a view to combating cross-border crime.

The purpose of the Danish initiative is to further enhance co-operation between Member States' liaison officers and to create the legal basis for Europol and Member States to make use of Member States' liaison officers posted to third states and international organisations.

When relevant for a specific investigation or prosecution in compliance with national laws, a Member State which has no liaison officers in a third state or international organisation may request information from another Member State's liaison officer posted to that third state or international organisation.

Member States shall provide for liaison officers posted to third states and international organisations to exchange, as required and on a regular basis, the information obtained on significant general issues or issues of common interest and to take common initiatives if the Member States concerned deem this necessary.

Furthermore, liaison officers posted to the same third state or international organisation shall assist one another in the performance of their respective duties, subject to agreements to this end between the Member States of origin concerned.

In accordance with instructions received, liaison officers posted to third states and international organisations shall provide their national authorities with information relating to criminal threats against other Member States not represented there by their own liaison officers. National authorities shall assess, according to the seriousness of the threat, whether the states concerned should be informed.

In compliance with national laws and for extraordinary requests which cannot be dealt with through existing international information channels, a Member State which has no liaison officer in a third state or international organisation may request information from a Member State that has posted a liaison officer to that third state or international organisation. The requested state shall examine the request and, if it agrees to it, shall forward it to its liaison officer in the third state concerned.

At the same time, the proposal will aim to strengthen the co-operation between liaison officers in third states and international organisations and create the legal basis for Member States to make use of other Member States' liaison officers in third states and international organisations. Information will only be communicated in accordance with relevant international instruments and national law and Member States will be asked to appoint contact points for communication of information between Member States and liaison officers in third states and international organisations.

Furthermore the proposal will create the legal basis for Europol to make use of Member States' liaison officers in third states and external organisations. However, it is not the purpose of the initiative to create a legal basis for Member States' liaison officers to act on behalf of Europol in third states and external organisations. When relevant, Europol should be able to ask a Europol National Unit in a Member State for relevant information from that states' liaison officer posted to a third state or external organisation where Europol is not present. The information will only be communicated to Europol in accordance with the Europol Convention and national law.

### **3. Legal basis**

The Council Decision will be based on the Treaty on European Union (TEU), article 30(1)(a)(b), article 30(2)(c), and article 34(2)(c). In accordance with TEU, article 39(1), the European Parliament will be asked for its opinion on the Danish proposal.

In accordance with TEU, article 34(2)(c), the Council Decision will be binding – excluding any approximation of the laws and regulations of the Member States – and shall not entail direct effect.

### **4. Principle of subsidiarity and proportionality**

The proposal for Council Decision is in accordance with the principle of subsidiarity and proportionality.

### **5. Schengen relevance**

The Danish proposal is a further development of the Schengen Agreement of 14 June 1985 on the gradual abolition of checks at the common borders<sup>1</sup>, in particular article 47 (4) thereof.

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<sup>1</sup> OJ L 239 of 22.9.2000, p. 19

As regards Iceland and Norway, the Danish proposal for a Council Decision – with the exception of Article 9 – constitutes a development of 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<sup>1</sup> 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<sup>2</sup>.

The United Kingdom will be taking part in the Danish proposal for Council Decision in accordance with Article 5 of the Protocol integrating the Schengen acquis into the framework of 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<sup>3</sup>.

Finally, Ireland will be taking part in the Danish proposal for Council Decision in accordance with Article 5 of the Protocol integrating the Schengen acquis into the framework of 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<sup>4</sup>.

## **6. Financial implications**

The proposal for Council Decision does not have financial implications for the budget of the European Communities or the Member States.

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<sup>1</sup> OJ L 176 of 10.7.1999, p. 36

<sup>2</sup> OJ L 176 of 10.7.1999, p. 31

<sup>3</sup> OJ L 365 of 1.6.2000, p. 43

<sup>4</sup> OJ L 64 of 7.3.2002, p. 20

## 7. Content

### Article 1

Article 1 contains a definition of the expression “liaison officer”. It underlines that in the Decision a liaison officer is a representative of a Member State posted to third states or international organisations for the purposes of preventing and detecting criminal offences, thus excluding questions solely concerning asylum and immigration.

### Article 2

Article 2 describes the tasks of Member States’ liaison officers. It obliges Member States to ensure that their liaison officers establish and maintain direct contacts with the police and other competent authorities in the third state or the international organisation with a view to facilitating and expediting the collection and exchange of information.

It furthermore obliges Member States to ensure that their liaison officers contribute to the collection and exchange of information, particularly of a strategic nature, which may be used to combat cross-border crime, including information providing a better knowledge of the legal systems and operational methods available in the states or international organisations concerned.

### Article 3

Article 3 obliges Member States to inform the General Secretariat of the Council each year of posting of liaison officers, including their responsibilities and any co-operative agreements between the Member States on the posting of liaison officers. The General Secretariat of the Council shall then draw up an annual summary to be sent to the Member States and to Europol concerning Member States' postings of liaison officers.

### Article 4

Article 4 concerns liaison officer networks in third states and international organisations and obliges Member States to ensure that their liaison officers posted to the same third state or international organisation meet regularly and when it is relevant to exchange information. The article also obliges the Presidency to take the initiative to hold such meetings.

Furthermore, article 4 obliges Member States to notify the Commission and Europol of such meetings and invite them to take part in the meetings when it is deemed appropriate.

Article 4 also obliges Member States to ensure that their liaison officers posted to the same third state or international organisation provide one another with assistance in contacts with the authorities of the host state or international organisation. At the same time, article 4 creates the legal basis for Member States to agree that their liaison officers shall share tasks among themselves.

Finally, article 4 creates the legal basis for Member States to bilaterally or multilaterally agree that liaison officers who are posted to a third state or international organisation by a Member State also look after the interests of one or more other Member States.

#### Article 5

Article 5 concerns co-operation between the Member States regarding the exchange of information via liaison officers in third states or international organisations and obliges Member State to ensure that their liaison officers in third countries or international organisations, in accordance with national law and relevant international instruments provide their respective national authorities with information relating to criminal threats against other Member States not represented by their own liaison officers in the third country or international organisation concerned. In that connection, it is underline that national authorities shall assess, according to the seriousness of the threat, whether the states concerned shall be informed.

However, it also follows from article 5 that Member States' liaison officers in third states and international organisations can provide information relating to criminal threats against other Member States directly to the liaison officers of the Member State in question, if that state is represented in the third state or international organisation concerned.



Finally, article 5 creates the legal basis for Member States which do not have liaison officers in a third state or international organisation to make a request to another Member State that does have liaison officers in the third state or international organisation concerned with a view to the exchange of relevant information. In that connection Member States can consent to information being exchanged directly between liaison officers in third countries and international organisations and the Member States.

#### Article 6

Article 6 concerns joint seminars for liaison officers and creates the legal basis for Member States to hold joint seminars on crime trends and on the most effective methods of combating cross-border crime.

#### Article 7

Article 7 concerns co-operation between liaison officers of the various authorities of the Member States and obliges Member States having liaison officers belonging to different authorities to ensure appropriate forms of co-operation between those officers having regard to their respective authorities' tasks.

#### Article 8

Article 8 concerns the establishment or designation of national contact points and binds Member State to establish or designate a national contact point to carry out the tasks referred to in the Council Decision.

This is a standard provision and it ensures that whenever a Member State makes a request for the exchange of information or co-operation, the competent authority of the Member States concerned makes the assessment of this request.

#### Article 9

Article 9 creates the legal basis for Europol to request information from Member States' liaison officers in third states or external organisations. It binds Member State to ensure that, in accordance with national law and the Europol Convention, Europol may request information from Member States' liaison officers in third countries or external organisations where Europol is not represented.

It follows from article 9 that Europol's requests shall be addressed to the Member States' National Units, which, in accordance with national law and the Europol Convention, take a decision on the request. Information from Member States' liaison officers in third states or external organisations will be transmitted to Europol in accordance with national law and the Europol Convention.

The article does not in any way regulate the work of Europol as established in the Europol Convention and its implementing measures. Thus, the Council Decision does not create the legal basis for Member States' liaison officers to represent Europol in third states or external organisations.

#### Article 10

Article 10 repeals the Joint Action 96/602/JHA and the provision in article 47 (4) of the Schengen Agreement of 14 June 1985 on the gradual abolition of checks at the common borders.

#### Article 11

Article 11 is a standard provision, and it follows from the article that the Council Decision enters into force two weeks after its publication in the Official Journal of the European Communities.

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