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From:	Presidency
To:	Delegations
Subject:	Enhancing cross border law enforcement cooperation: Impact of the COVID-19 pandemic on EU law enforcement

At informal video conferences on 15 May 2020 and 13 July 2020, COSI discussed the latest developments regarding the impact of COVID-19 on EU internal security. It became clear that the current crisis has had a significant impact on law enforcement authorities across the European Union and that internal security in Europe requires strong cooperation. Relevant in that context, the Presidency has suggested that a European Police Partnership be established – a concept already introduced during the informal meeting of home affairs ministers on 7 July 2020 and the informal COSI meeting on 13 July 2020.

The Presidency suggests that the discussion be continued, focusing on the experiences of Member States when dealing with the consequences of the COVID-19 pandemic on law enforcement, with the aim of agreeing on steps forward, towards more effective cross-border cooperation in crisis situations.

When the COVID-19 pandemic started to unfold in the EU, law enforcement work had to be quickly adapted to the changing conditions. The change in focus of criminal activities

reinforced the trend of crime being committed or facilitated online¹. Member States' law enforcement authorities had to perform new tasks, such as implementing measures to prevent further contagion, including restriction of movement and infection control, or dealing with suspects/criminals infected with COVID-19 or claiming to be infected. Moreover, new ways of performing everyday tasks were often required. This involved developing suitable working methods and the availability and use of electronic tools to ensure operational continuity, support daily tasks and communication, and protect police officers from the risk of infection in general.

Between mid-March and mid-June, law enforcement activities in most internal border regions in the EU focused on border controls, including the channelling of cross-border traffic in those regions. Internal border control activities required significant staff resources. During the first weeks of the pandemic, law enforcement authorities in the border regions had to deal with a high volume of requests from citizens regarding the limitations on border crossings, while a growing number of citizens voiced their discontent with the changing legal requirements for crossing internal borders. The priority of law enforcement authorities was hence to coordinate the conditions for entry and common multilingual communication efforts to increase the public's acceptance of restrictions.

In terms of cross-border law enforcement cooperation, the need to interact as efficiently as possible to implement internal border controls, whilst minimising physical encounters, was a particularly complex aspect.

The Annex to this note outlines several aspects in cross-border police cooperation that have proven to be particularly challenging during the COVID-19 pandemic. These findings are based on Member States' replies to Part I of the questionnaire on cross-border police cooperation, distributed on 22 June 2020 (CM 2716/20).

In general, law enforcement authorities managed to cooperate and maintain law and order in Member States quite successfully, given the extremely difficult and unexpected circumstances. In the internal border regions, cooperation via Police Customs Cooperation Centres (PCCCs) and other regional structures has played a key role in managing the pandemic crisis. Some Member States underlined that cooperation with their colleagues in neighbouring countries developed positively in some cases due to the necessity of close

¹ See Europol reports since March 2020, e.g. Exploiting isolation - Offenders and victims of online child sexual abuse during the COVID-19 pandemic, June 2020; Frontex, Situational Assessment – Cross Border Crime Scenarios and COVID-19.

cooperation to prevent the spread of the pandemic. The measures taken at national level to fight the spread of COVID-19 have had a significant impact on cross-border law enforcement cooperation in the EU. This has highlighted several vulnerabilities and gaps in the current structures for cross-border police cooperation. It has become clear that focusing on national approaches in ad hoc (pandemic) crises can be effective as a short-term response. However, close coordination, cooperation and communication at all levels (operational, tactical and strategic), in particular between neighbouring countries' law enforcement authorities, have generally been found to be vital in order to adequately cope with (pandemic) crises. The COVID-19 pandemic has highlighted the need to better equip law enforcement authorities for future (health) crises – on the regulatory, tactical, communicational and infrastructural levels – as well as the need to increase the preparedness of law enforcement forces for threats to our security which do not stem directly from criminal activities.

Way forward

In view of Member States' experiences during the COVID-19 pandemic, the following issues should be taken into consideration:

- a) **Raising awareness about existing legal and technical tools:** Cross-border police cooperation and communication could be strengthened by more effective use of existing instruments. Thus, it would be useful to identify and summarise the existing tools, possibly by adding a new chapter on crisis cooperation in the Manual on Cross Border Operations²; organise more training, including more inter-unit training at all levels; and step up awareness-raising activities;
- b) **Amending or/and clarifying legal instruments:** The provision contained in Article 18 of the Prüm Decision, stipulating the conditions for mutual assistance in case of disasters, was not designed for the specific circumstances of a health emergency, nor are any other provisions in the EU police cooperation framework. It may be worth assessing whether there is a need to amend this and other provisions of the Prüm Decision and the Convention Implementing the Schengen Agreement (CISA) so as to

² 10505/3/09 REV 3.

integrate the specificities of infection prevention and whether this would be possible within the framework provided by Article 87 TFEU;

- c) **Enhancing secure communication and exchange:** During the pandemic, the complexities resulting from the lack of direct personal contact and adequate technical equipment for regular exchange have proven the need to further enhance possibilities for secure cross-border and pan-European communication between law enforcement authorities in the EU. In the informal VTC meeting on 13 July 2020, COSI asked the LEWP and IXIM to continue discussing the parameters for a secure communications solution for confidential content. As a first step, COSI has suggested that Europol (Europol's Innovation Lab) could map available solutions and identify possible gaps and operational requirements. The Member States have called for building on solutions that already exist, rather than creating new ones, taking into account the necessity of integration into national information management structures. So far, Member States have particularly stressed the need for a mobile solution/instant messaging software for operational purposes ('WhatsApp for law enforcement officers'), which should be user-friendly and allow for different chatrooms/groups, and also the need to extend the availability of Europol's secure video conferencing system.

Concerning the secure instant messaging software, already last year, Europol started using the Virtual Command Post (VCP). As described in more detail in the Annex, this is a secure solution for the exchange of near-real-time operational data and strategic information between Europol and its partners. During the COVID-19 pandemic, the VCP has proven to be a useful tool for maintaining communication on ongoing operations between Europol and involved partners. The VCP could be a good starting point to respond to the need identified by the Member States.

With the creation of vRoom within the Europol Platform for Experts (EPE), Europol has addressed the need of Member States' law enforcement authorities for swift communication on COVID-19-related questions. In order to be better prepared and equipped for crisis communication, it seems Europol should also be able to host a platform that supports secure police

communication by Europol and the Member States during pandemic (or other) crisis management situations. In this context, Eurojust has been mandated by the Council to prepare and regularly update a compilation on COVID-19-related national measures that affect judicial cooperation in criminal matters³; it could be assessed whether Europol should also be asked to continue and increase the support to Member States in (pandemic) crises to the extent that COVID-19-related national measures would affect cross-border cooperation in criminal matters.

- d) **Coordination:** In order to ensure effective prevention and law enforcement activity in transnational (pandemic) crises, Member States have emphasised the added value of stepping up their mutual coordination efforts (for example of good practices see the Annex). In particular, structures at regional level could be strengthened (or set up where not yet in place), focusing on information exchange, situational awareness and possibly a joint approach to crisis response by law enforcement authorities. Common guidelines/recommendations on entry conditions and procedures in EU cross-border law enforcement cooperation in (pandemic) crises would allow Member States to cope with these situations more effectively.

In the light of the above, delegations are kindly invited to express their views on the following questions:

1. Which are the key parameters for improving (in the short term) secure communication between law enforcement authorities in the EU?
2. Should a permanent platform be established to enable Member States to swiftly exchange (operational and/or non-operational) information in the law

³WK 3472/2020 REV 1, p. 4: *'In March 2020, the Council submitted a first questionnaire to the Member States, Iceland and Norway on the impact of said national measures on judicial cooperation instruments. In parallel, Eurojust and EJM also collected information from the Member States on the same topic. In view of the rapidly evolving situation, new questions were then regularly submitted to the Member States, Iceland and Norway by said actors. In light of these developments, in April 2020 the Council gave a mandate to Eurojust and EJM to prepare a compilation of all the information collected so far, to submit new questions to the Member States, Iceland and Norway where needed, and to regularly update the compilation in order to continuously assist practitioners in the application of judicial cooperation instruments in criminal matters in these challenging times.'*

enforcement sector during a pandemic crisis management situation? If yes, who should host such a platform?

3. Is there a need to amend the police cooperation legal framework in order to address the law enforcement consequences of pandemic situations, e.g. Article 18 Prüm Decision, or the CISA?
4. As Member States have expressed that common guidelines/recommendations for entry and cooperation procedures would improve the readiness of law enforcement authorities for a future pandemic (or a new wave), in which group/structure could they be drafted?
5. Are there any best practices for communication, cooperation and coordination you could share to support the work of the EU concerning law enforcement cooperation during times of crisis?

ANNEX

This Annex gives a detailed explanation of several aspects of cross-border police cooperation that Member States have reported to be particularly challenging during the COVID-19 pandemic.

1) Operational cooperation

Cross-border operational police cooperation in the EU has decreased significantly since the COVID-19-related restrictions entered into force in most Member States in mid-March 2020.

Many forms of operational cooperation between Member States' law enforcement authorities, such as operational meetings and joint activities, had to be reduced to the absolute minimum due to the measures enforced to prevent further spread of infection. Many EMPACT activities were cancelled or postponed. However, other work streams within the EU Policy Cycle continued in an alternative form (such as a written procedure for AOP 2021 drafting and strategic meetings via video conference), and the 10 EU Crime Priorities addressed in EMPACT are still relevant in the current COVID-19 situation (cybercrime, with cyber-enabled criminal actions including child sexual exploitation; organised property crime, with thefts of medical equipment, crimes against the elderly; criminal finances, with fraud and swindling, or money laundering by groups taking advantage of the crisis; environmental crime, with medical waste trafficking and wildlife trafficking; etc.). Cooperation in ongoing urgent operational cases mostly continued.

The activities in border regions focused on border controls and the channelling of cross-border traffic, which required extensive staff resources. Some Member States closed their borders for non-work-related individual transport. From a practical point of view, law enforcement authorities had to deal with new situations such as queues of trucks at borders, a massive influx of potentially infected persons, and demonstrations against the border closures. The implementation of law enforcement measures integrating the public health protection perspective on the basis of epidemiological assessments by the health authorities was a major new challenge during the COVID-19 pandemic and entailed a considerable workload. One new phenomenon was 'stranded transit travellers' who were

prevented from travelling to their countries of origin by the restrictions on crossing internal borders of EU Member States.⁴ It was also reported that defining the border crossings and expanding their infrastructure to channel cross-border traffic proved to be a challenge for law enforcement authorities in the border regions. The lack of infrastructure at some border crossing points at the internal borders also confronted the police authorities with difficulties, including with regard to joint controls. Some of them were only set up after a significant delay and following political intervention.

Tourist, cultural, sporting or leisure activities were forbidden or discouraged. Major events – which often trigger cross-border police cooperation – were or are still prohibited in most Member States. National lockdowns and border controls led to a significant decline in road and rail traffic.

Certain areas of crime, such as property crime (e.g. car theft) and human trafficking, decreased significantly. This temporarily reduced the need for active situational operational cooperation. Cross-border law enforcement measures such as hot pursuits, cross-border surveillance, joint patrols and joint operations took place on a low level.

Joint police teams almost ceased to work as many officers were temporarily transferred to reinforce the general service of their authorities, in particular for border controls. Personal cross-border contacts within the framework of joint operational measures and strategic cooperation in the regions, but also in connection with joint exercises, seminars, further training and exchange programs, decreased significantly. Member States have reported that this summer joint patrols for preventive purposes in tourist regions will be conducted only in exceptional cases.

However, operations and 24/7 accessibility of most of the PCCCs were generally maintained – partly thanks to fast-tracked special permits to enter the neighbouring country. It was reported that the volume of inquiries, with the exception of citizens' inquiries about the border situation, declined. Non-essential investigative measures were significantly reduced. For example, it was noted that observations nearly came to a standstill. Only mandatory arrangements in ad hoc situations were ensured (e.g. transfers and deliveries).

⁴E.g. At the German border, between mid-March to mid-June, entry was denied to almost 196 000 persons intending to travel into or through Germany.

The significant reduction of personal interaction between Member States' law enforcement authorities has impaired effective cross-border cooperation. However, in some cases, positive effects on cooperation between neighbouring Member States were reported. Cooperation in some regions (e.g. Nordic cooperation) at all levels has been mentioned to have stepped up remarkably during the COVID-19 pandemic.

Generally, Member States' police authorities have called for a fast return to the proven cooperation structures in place, in order to continue working effectively in combatting cross-border crime.

2) Legal aspects

Art. 18 of Council Decision 2008/615/JHA (the 'Prüm Decision') stipulates:

Member States' competent authorities shall provide one another with mutual assistance, in compliance with national law, in connection with mass gatherings and similar major events, disasters and serious accidents, by seeking to prevent criminal offences and maintain public order and security by:

(a) notifying one another as promptly as possible of such situations with a cross-border impact and exchanging any relevant information;

(b) taking and coordinating the necessary policing measures within their territory in situations with a cross-border impact;

(c) as far as possible, dispatching officers, specialists and advisers and supplying equipment, at the request of the Member State within whose territory the situation has arisen.

As Art. 17 of the Prüm Decision provides for the possibility for joint patrols with the purpose of *maintaining public order and security and preventing criminal offences*, it could also be applicable in pandemic situations. Council Decision 2008/617/JHA of 23 June 2008 allows for cooperation between the special intervention units of Member States in crisis situations. Furthermore, bi- and trilateral police treaties contain provisions specifying

the extent of mutual assistance and the procedures to be followed in crisis situations.⁵ Some Member States have reported that bilateral agreements with other Member States' police authorities were not officially activated during the pandemic.

In the replies to the questionnaire, no Member States mentioned that cooperation and assistance during the COVID-19 pandemic was based on the instruments provided for in the above-mentioned provisions of the Prüm Decision. There might be several reasons for this. Possibly, police authorities were not fully aware of the opportunities that exist under the current legal framework. Furthermore, in view of the pandemic, police authorities might have been reluctant to involve the police authorities of other Member States directly. In any case, the applicability of these provisions to pandemic crises seems unclear. Art. 18 of the Prüm Decision is not designed for the specific circumstances of a health emergency, as the provision does not contemplate the need to combine effective police work with the specificities of infection prevention. The existing legal instruments might be insufficient to face the multiple new challenges to border regions arising from a pandemic. The challenges that have arisen in connection with COVID-19 have revealed the need to assess whether an amendment of relevant provisions is necessary in order to cope better with future situations and maintain effective cross-border law enforcement cooperation in situations of large-scale incidents or crisis. It may therefore be worth examining, inter alia, whether there is a need for law enforcement authorities to better assist each other, as provided for in Art. 18 Prüm Decision, in pandemic situations.

3) Communication and information exchange

Member States have stressed the importance of direct communication and meetings in person as a basis of trust, leading to successful cooperation. In addition to physical meetings between Member States' law enforcement authorities, obviously digital communication via intranet platforms and data and information exchange has played a major role in recent years.

Overall, information exchange via established channels such as SIENA, SPOCs, SIRENE Bureaux, PCCCs and liaison officers continued to function despite COVID-19 restrictions. However, a general slowdown and decrease in messages and information exchange has

⁵ E.g. Art. 25 Benelux Police Cooperation Treaty of 8 June 2004; Art. 13 Bilateral Police and Customs Treaty between Belgium and France of 18 March 2013; bilateral agreements on mutual assistance in crisis situations or natural disasters, e.g. between PL and CZ, PL and DE.

been observed. It was noted that this might be due to the fact that many police staff were teleworking or being assigned to COVID-19-related tasks. Member States mentioned that the COVID-19-related closure of the Europol Headquarters had an immediate impact on the work of Europol Liaison Bureaux. However, Europol created rooms for liaison officers, to allow them access to Europol's operational networks and other services, such as secure video conferencing, at Headquarters.

Eu-LISA reported a 70 % decrease in the use of the SIS in April and May 2020, with a gradual recovery of operations since June. As of 20 July 2020, new and updated alerts in the SIS are almost at the same level as at the beginning of the crisis. The number of queries is also growing, though more slowly.

As mentioned, the PCCCs maintained a permanent on-call service, and information requests regarding the identity of persons and verification of vehicle licence plates were executed without delay. However, the number of verification requests declined between March and June 2020. Some PCCCs reported that the number of SIS hits in the border regions increased.

In the field of counter-terrorism, Member States mentioned that the exchange of (sensitive) information slowed down during COVID-19 pandemic, as this type of information is typically shared in physical meetings.

As physical meetings have hardly been possible in the past months due to COVID-19 restrictions, communication between Member States' police authorities [outside the border regions] took place almost exclusively via email, telephone or video conferencing. Member States have welcomed the new channels for remote communication between law enforcement authorities, allowing for swift and efficient cooperation. However, the situation highlighted the need for secure cross-border communication tools, as intensively discussed in COSI.

It is clear that the effective and intensive use of all existing channels of information exchange and communication is of key importance.

Europol has been active in expanding the possibilities for Member States to communicate and exchange information in a swift and secure manner.

Regarding secure exchange of operational data, Europol deployed the Virtual Command Post (VCP) in 2019, a secure solution for Europol and its partners to exchange near-real-time operational data (including personal data) and strategic information, effectively complementing SIENA. Information exchange using the VCP has been carried out on an ad hoc basis for dedicated periods of time (e.g. short-term action days, operational staff deployment, etc.). This solution provides the possibility to exchange instant messages as well as permitting video and audio calls. During the COVID-19 pandemic, the VCP has proven to be a useful tool for maintaining communication in ongoing operations between Europol and involved partners. However, Member States have noted that it is expensive and that there currently seems to be a limited amount of licences available for Member States.

In addition, Europol has recently expanded the functionalities and use of its secure video conferencing application, Ops Talk. It allows the exchange of operational data up to the classification level EU Restricted between Europol, the Member States (Europol National Units) and third countries' operational National Contact Points. The solution is deployed on Europol's Secure Network and provides secure audio and video calls, conferencing and instant messaging possibilities. Europol operational staff can use it in the Headquarters and during deployments. They can collaborate with one another but at the same time are able to connect to the Member States' ENUs and third countries' NCPs. It has been mentioned that, for the time being, the secure VTC equipment is only available in the ENUs, which are often physically detached from the law enforcement authorities actually dealing with operational cooperation, e.g. in the area of counter-terrorism. Member States have pointed out that in accordance with their operational needs, the secure VTC equipment should be available in all police district headquarters.-

Europol is currently working on a project to further develop its video conferencing solutions. The aim is to no longer limit the solution to the ENUs and the NCPs and to ensure availability for a wide range of law enforcement authorities via video teleconferencing systems.

Another development is the Quick Response for Operational Centres (QROC) project, which is currently being developed by the ENLETS network, in cooperation with eu-LISA. It deals with the rapid and secure cross-border exchange of data on terrorist threats to protect the public.

It seems that due to the current (technical) restrictions, the mentioned tools still do not fully serve Member States' operational needs.

Communication in the field during cross-border operations still needs improvement due to compatibility gaps between the radio communication systems of Member States' police authorities, despite years of work by experts such as the RCEG. Broadband internet connections for secure data communication are still under discussion and have not yet been realised.

4) Coordination

Coordination between law enforcement authorities in the internal border regions is a major part of daily work, and institutionalised cooperation channels at EU/national/regional/local level enable rapid coordination of measures in a variety of situations. Due to the restrictions imposed to prevent further spread of infection, effective coordination of measures has become even more important.

Structures for operational cross-border police cooperation/coordination in pandemic situations

At the beginning of the COVID-19 pandemic, barely any specific mechanisms or structures were in place for temporarily intensifying cross-border cooperation in view of an epidemiological situation.

At regional level, in order to solve specific ad hoc challenges in the regions of the internal borders, PCCCs (where existent) and personal contacts played a valuable role.

Several Member States' police authorities have stepped up cooperation with neighbouring countries using existing common platforms, allowing for exchange of information and best practices both on a local as well as on a strategic level, which allowed for exchange of information regarding the pandemic situation and measures taken⁶. At regional level, neighbouring countries have appointed COVID-19 points of contact and put in place a network to discuss joint efforts and share best practices for surveillance, emergencies and

⁶ E.g. BE/NL/FR/LU; Baltic countries and Nordic cooperation.

(pandemic) situation pictures⁷. A cross-border COVID-19 Taskforce was established between neighbouring Member States on policy level, establishing direct channels of communication⁸. Other neighbouring Member States signed a Memorandum of Understanding, regulating cooperation regarding movement of persons within the territory of the neighbouring states⁹.

At EU level, while the capabilities of the EU Civil Protection Mechanism were also available, several new structures were set up in the context of law enforcement. On 3 March 2020, ZOOM (meanwhile renamed to vRoom, ‘virtual Requests out of Mandate’) was established within the Europol Platform for Experts (EPE). EPE vRoom created the possibility for police authorities to swiftly communicate on issues regarding COVID-19, including those that might not fall directly under Europol’s core activities. It is comparable to an internet forum which contains questions and answers that are visible to all registered users. For example, information regarding threat assessments, information on police equipment (e.g. the kind of masks used by police), and travel restrictions have been exchanged. It is not permitted to exchange operational information (in particular with personal data). By mid-June 2020, vRoom had members from more than 40 countries – most, but not all, Member States, as well as third countries such as Australia and the United States.

Furthermore, COM/DG Home established a COVID-19 Information Group for Home Affairs, with regular VTC meetings, to facilitate the exchange of information and gathering of best practices by Member States and Schengen Associated Countries on the situation within the Schengen area as well as at external borders. A Working Group on COVID-19, hosted by Europol and Italy, has met via VTC meeting to discuss best practices.

Member States have stressed the effectiveness of structures at regional level in enhancing operational cross-border cooperation and coordination, in particular in crisis situations, and supported their establishment where not yet existent. National expert meetings could be held at EU level as well. In that regard, Member States have stressed that any new structure should be well integrated into the existing structures and mechanisms in order to avoid overlapping and conflicts of responsibilities.

⁷ Nordic cooperation.

⁸ NL, BE and the German federal states of North Rhine-Westphalia and Lower Saxony.

⁹ LV, EE, LT.

Coordination regarding conditions of entry and procedures

Differences in Member States' regulations on exit and entry often caused difficulties for law enforcement authorities in the internal border regions. In contrast to regular border checks, COVID-19-related border checks and restrictions on entry were/are based on national and EU legislation. At times, it was a challenge for both citizens and authorities to keep abreast of the applicable legal situation, due to the multitude of different regulations on the scope of entry restrictions. For example, at a certain point, the national legislation of one Member State authorised family visits abroad, while a neighbouring Member State only allowed for essential movements. In some border areas, the public became resentful over the duration and intensity of reintroduced border controls.

Member States have stressed that common guidelines/recommendations and procedures for cross-border movement would improve readiness for possible future large-scale incidents or crises (e.g. a 'second wave' of the COVID-19 pandemic).¹⁰.

This would include the definition of urgent reasons for entry and exceptions (e.g. for employees of critical infrastructure), standardised multilingual forms/commuter certificates, models for recognised international tests for specific diseases (e.g. COVID-19) to be demonstrated by persons crossing the borders. Furthermore, to increase readiness for future crises, it could be ensured that joint border control posts could be made operational within a short period of time. Furthermore, common guidelines could be established for continuation of cross-border law enforcement cooperation in crises. In this way, processes in the internal border regions could be simplified and accelerated.

Where appropriate, it would be possible to amend or adopt agreements between Member States in order to clarify how law enforcement authorities could deal with certain aspects of pandemic crises, in particular in the (internal) border regions.

5) Awareness and training

Exercises or further training activities have mostly not taken place since mid-March 2020. Knowledge of existing tools for cooperation and foreign languages, especially English and

¹⁰ In this context, see Communication from the Commission: COVID-19 – Towards a phased and coordinated approach for restoring freedom of movement and lifting internal border controls, C(2020) 3250 final, 13 May 2020.

those of the neighbouring countries, is essential in everyday cooperation as well as in times of crisis.

It has been suggested that the conduct of exercises (table-top or physical) could be useful to clarify the procedures applicable in large-scale incidents and (pandemic) crises. It was stressed that joint scenario planning and exercises would be useful at the regional level (between neighbouring countries), and the possibility of engaging all partners (police, customs, border guards, medical staff) was raised. Examples already exist, e.g. BE, NL and FR have set up an (ISF-funded) project which includes exercises to test emergency border plans for major incidents and situations. Member States have also supported the idea that at EU level, agencies could initiate joint scenario planning and exercises and assess whether it is possible to follow the model of special intervention units constantly engaging in scenario-based trainings and definition of protocols. In that regard, CEPOL has recently conducted a training needs assessment on the COVID-19 pandemic¹¹.

¹¹ See CEPOL's report 'Impact of COVID-19 on law enforcement operations and training needs', 1 July 2020.