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NOTE

From:	Presidency
To:	Delegations
Subject:	Draft Council Conclusions on enhancing cross-border law enforcement cooperation

Ever more effective law enforcement cooperation between EU Member States and their respective officers, in particular along the shared internal borders of the Schengen Member States and associated countries, is a cornerstone of the efforts undertaken in furthering the common goals of combating serious and organised crime and keeping the EU safe.

A multi-layered framework of legal provisions regulates that cooperation: the Schengen acquis (in particular the Convention implementing the Schengen Agreement) and the so-called Prüm Decisions provide for a variety of instruments for cooperation between Member States. Alongside, a wide array of bi-, tri- and multilateral agreements provide for further forms of cooperation or specify those provisions requiring further arrangements for implementation. Discussions regarding the challenges and best practices identified in this context were initiated under the Romanian Presidency and continued under Finland's Presidency and during workshops organised by the European Commission. Furthermore, in its new EU Security Union Strategy 2021-2025, the Commission has expressed its intention to evaluate the potential benefits of a Police Cooperation Code¹.

¹ COM(2020) 605 final COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE EUROPEAN COUNCIL, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS on the EU Security Union Strategy, p. 22.

Mindful of the topic's crucial importance, the German Presidency strongly believes that the Member States should take action to enhance the sharing of best practices, to learn from others, to work towards legal and practical improvements and to maximise the use of existing instruments of cooperation. In order to further develop the discussion on this subject and reach a common understanding of the current status and the way forward, the Presidency asked for Member States' support and distributed a questionnaire².

In the questionnaire, the Member States were asked to provide practical insight on the functioning, challenges, best practices and potential of cross-border law enforcement in general. 19 Member States, Switzerland and FRONTEX replied to the questionnaire. The achievements, constraints, and suggested improvements highlighted by the Member States were summarised in two documents³. The issues raised were discussed during the Law Enforcement Working Party (LEWP) meeting on 10 September 2020. Participants welcomed the German Presidency's proposal to formulate the identified common understandings in Council Conclusions.

Consequently, the Presidency has prepared draft Council conclusions on enhancing cross-border law enforcement cooperation, set out in the annex to this note.

The draft will be discussed during the informal videoconference of the LEWP on 14 October 2020.

² CM 2716/20 - Questionnaire on Cross-Border Law Enforcement Cooperation

³ Doc. 10313/20 INIT (focusing on the replies to question 2 of the questionnaire) and Addendum 1.

DRAFT COUNCIL CONCLUSIONS

ON ENHANCING CROSS-BORDER LAW ENFORCEMENT COOPERATION

THE COUNCIL OF THE EUROPEAN UNION,

RECOGNISING the fundamental role of further improving cross-border law enforcement cooperation in promoting the shared goal of strengthening the area of freedom, security and justice, as emerging threats highlight the need for further synergies and closer cooperation at all levels to ensure an effective and coordinated response by authorities,

HAVING REGARD to the Convention implementing the Schengen Agreement (CISA), to Council Decision 2008/615/JHA of 23 June 2008 on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime, to Council Decision 2008/616/JHA of 23 June 2008 on the implementation of Decision 2008/615/JHA and to Council Decision 2008/617/JHA of 23 June 2008 on the improvement of cooperation between the special intervention units of the Member States of the European Union in crisis situations (Prüm decisions), as well as to bi- and multilateral police cooperation treaties between Member States,

BUILDING ON the strategic priorities and guiding principles of cross-border law enforcement cooperation contained in the EU Strategic Agenda 2019-2024 on improving cooperation and information-sharing to fight terrorism and cross-border crime⁴, the New EU Security Union Strategy 2021-2025⁵, and the European Parliament resolution of 17 December 2014 on Renewing the EU Internal Security Strategy⁶, reflecting a shared agenda for the Council, the Commission and the European Parliament, and the Council conclusions on certain aspects of European preventive policing of 6 June 2019⁷,

⁴ EUCO 9/19
⁵ COM(2020) 605 final
⁶ 2014/2918
⁷ 10062/19

AKNOWLEDGING non-binding Council documents such as good practices (Schengen Catalogue⁸) and guidelines (SPOC Guidelines⁹, PCCC Guidelines¹⁰, manuals on law enforcement information exchange¹¹ and on cross-border operations¹²),

TAKING NOTE of the Communication from the Commission on the New EU Security Union Strategy 2021-2025¹³, emphasising that ‘*the level of cooperation could still be improved through streamlining and upgrading the available instruments*’ and ‘*The Commission will look at how a Police Cooperation Code might support this*’, and the Inception Impact Assessment on the initiative of an EU Police Cooperation Code (PCC), published by the Commission on 28 September 2020¹⁴,

STRESSING the relevance and underlying added value of the EU Policy Cycle / EMPACT¹⁵, also mentioned in the New EU Security Union Strategy 2021-2025, which involves the Member States’ competent law enforcement authorities, EU institutions and agencies and improves cross-border cooperation in the field of the fight against serious and organised crime,

RECOGNISING the important role played by Europol, as the EU’s criminal information hub, in supporting Member States and their relevant authorities in operations and investigations and in promoting cooperation,

RECOGNISING the significance of Member States’ sole responsibility in the area of national security, in accordance with Article 4(2) TEU, and their activities in this field and

APPRECIATING the progress achieved so far by Member States in continuously improving the operational cooperation between law enforcement authorities,

RECALLING the importance of applying the principle of subsidiarity,

⁸ Council, 15785/3/10.

⁹ Council, 10492/14.

¹⁰ PCCC: Police Customs Cooperation Centre. Doc. 9105/11.

¹¹ Council, 6727/18.

¹² Council, 10505/09.

¹³ COM(2020) 605 final, p. 22

¹⁴ Ref. Ares(2020)5077685

¹⁵ Council Conclusions 7704/17

THE COUNCIL:

UNDERLINES that cross-border law enforcement cooperation rests on the principle of national sovereignty, establishing the exclusive prerogative of Member States to carry out law enforcement activities within their national territories,

EMPHASISES that the EU's area of freedom, security and justice requires efficient, lawful law enforcement cooperation, based on mutual trust, in dealing with cross-border and organised crime, extremism, terrorism and illegal migration,

HIGHLIGHTS that the COVID-19 pandemic and the common aim of preventing the spread of infection have underlined the need for closer cross-border cooperation including the field of law enforcement in particular along the shared internal borders,

UNDERLINES that the emergence of new criminal phenomena and the evolution of technological tools available to both police authorities and offenders require evaluate the need to the mechanisms of law enforcement cooperation to be adapted,

CONSIDERS the multi-layered framework of law enforcement cooperation to be a foundation of an adequate combination of concerted solutions to common challenges, with diverse forms of cooperation adjusted to specific needs,

RECALLS that improvements to the current instruments should adequately balance consolidated EU-wide provisions and allow for tailored, small-scale forms of cooperation, reflecting regional and local circumstances, while respecting fundamental rights and taking into account the principle of subsidiarity,

EMPHASISES that it is preferable to improve instruments that are already available, rather than creating new forms of cooperation, and RECALLS THEREFORE the need for consistent and effective implementation of existing instruments,

OBSERVES growing discrepancies between the Convention implementing the Schengen Agreement and the Prüm decisions on the one side, and the dynamically evolving bi-, tri- and multilateral treaty practice and the practical requirements of contemporary police work on the other, resulting in uncertainty about the applicability and scope of existing forms of cooperation,

RECOGNISES the fundamental importance of conferring adequate executive powers on law enforcement officers involved in cross-border cooperation, in particular the possibility to equip the respective police forces with symmetrical powers, while respecting fundamental rights and observing the principle of national sovereignty,

APPRECIATES the impact of Police and Custom Cooperation Centres (PCCCs) and Single Points of Contact (SPOCs), having emerged as a best practice that facilitates and speeds up police cooperation, in particular with regard to information exchange, and ENCOURAGES the further enhancement of the resources and competences of PCCCs, for instance by promoting their widespread and systematic use of the Secure Information Exchange Network Application (SIENA),

STRESSES the need to adapt the legal requirements of instruments such as cross-border surveillances and cross-border hot pursuits to the necessities of contemporary police work,

UNDERLINES the role of joint police patrols, units and offices, joint operation points, joint action days and joint investigations, as these effectively enhance the maintenance of public order and crime prevention in border regions, increase the subjective sense of security of citizens, and allow for cooperation law enforcement forces from different Member States to regularly provide joint service, thereby creating the basis for mutual trust,

UNDERLINES, at the same time, the need to respect and give full effect to the rights and freedoms of citizens as enshrined in the existing legal framework and in the Charter of Fundamental Rights, recognizing that public trust in law enforcement authorities is essential to maintaining the citizens' subjective sense of security,

HIGHLIGHTS the role of constant interaction and adequate information exchange, as well as continuous joint training, committee work, seminars, workshops and exchange programmes at different levels, notably with the support of the European Union Agency for Law Enforcement Training (CEPOL), aimed at achieving a shared understanding of European law enforcement.

and therefore CALLS ON THE MEMBER STATES:

- to take all necessary steps to further strengthen operational cross-border law enforcement cooperation by effectively implementing existing instruments and, where appropriate, by extending, consolidating and simplifying the legal foundations, including:

Joint patrols, units, offices and operation points: to further increase the use of these instruments and ensure their effectiveness and cost efficiency, regarding joint patrols for instance on the basis of a 1:1 model (one police officer from each Member State involved):

- in that context, to clarify and, where appropriate extend, the conferral, in a symmetrical manner, of adequate executive powers on foreign officers operating outside of the territory of their home state in fulfilment of their duties; while respecting the principle of national sovereignty
- to enhance the use of cross-border and joint investigations, and to simplify the procedures for the setting up of Joint Investigation Teams (JITs) within the existing legal framework and comparable bi-/multilateral cooperation structures;

Cross-border surveillance: to clarify and simplify the legal requirements for conducting such surveillance, while upholding the existing standards for the protection of fundamental rights, to standardise the measures that may be approved and the technical means that may be deployed, e.g. drones and localisation devices, and to enhance the authorisation procedures, including by dropping the distinction between urgent and non-urgent surveillance, extending the required time frame for obtaining authorisation for urgent surveillance and where necessary allowing surveillance to be launched in the territory of another country before it continues in the home country of the officers involved,

Hot pursuits: to clarify legal conditions for hot pursuits¹⁶, to adapt the legal requirements to the needs of the practitioners by broadening both the scope for hot pursuits and the competences of officers operating across borders, including by improving the sharing of localisation data, enabling hot pursuits whenever a person attempts to evade law enforcement procedures and allowing for hot pursuits to be carried out via land, air, sea and waterways;

Single Points of Contact (SPOCs) and Police and Customs Cooperation Centres (PCCCs): to strengthen the existing PCCCs and SPOCs and their areas of competence, to build up further structures of this kind and to increase efforts in the field of joint operational planning and exercises to foster recourse to cross-border cooperation, in particular in situations of mass gatherings, disasters and serious accidents;

Specialised intervention units: to further strengthen and establish such structures in EU Member States and associated countries with a view to enhanced cooperation;

Police-Customs cooperation: to ensure close cooperation and targeted information exchange, in particular in the framework of the EU Policy Cycle / EMPACT and in border regions.

- to swiftly improve means for regular or ad hoc exchange of information and direct communication, including common structures such as intranet platforms, operation control systems or radio communication networks;
- to closely cooperate, coordinate and communicate in times of crisis, such as during the COVID 19-pandemic, at operational and strategic level, in particular with neighbouring countries' law enforcement authorities, for instance by using established or ad hoc structures;

¹⁶ E.g. common definition of 'apprehend' and 'detain' – see Article 41 CISA

- to raise awareness among law enforcement authorities about existing tools and to increase their readiness to cooperate across borders, making full use of available sources of information such as the recently updated Manual on cross-border operations¹⁷ and its national fact sheets;
- to ensure more readily available information, e.g. by introducing web apps that would inform individual law enforcement officers on the applicable rules for cross-border actions in given areas, ideally compatible with EU information channels, and by increasing use of standardised forms;
- to further strengthen structures for both regular and ad hoc exchanges, including physical and secure virtual meetings, committee work, workshops and exchange programmes, as well as joint trainings and seminars to improve practical skills for operational cooperation, including language and legal knowledge;
- to continue the exchange on and implementation of best practices as a valuable tool in improving cooperation.

CALLS ON THE COMMISSION:

- to duly take into account – when assessing options for a proposal for a European Police Cooperation Code – the value and success of local, regional, bi- and multilateral law enforcement cooperation between Member States, in particular in the regions with shared internal borders, and the national sovereignty of Member States,
- to consider adjusting the EU legal framework to further strengthen cross-border law enforcement cooperation while guaranteeing data protection and fundamental rights, addressing current operational needs, reviewing in particular the provisions in Title III, Chapter 1 (Police Cooperation) of the CISA and the Council Decisions 2008/615/JHA, 2008/616/JHA and 2008/617/JHA (Prüm decisions), especially regarding hot pursuit and cross-border surveillance, which should be fully functional across Europe, while respecting the possibility for Member States to provide for even closer cooperation bilaterally, as mentioned above,

¹⁷ Note by the Presidency: Update of the Manual is under preparation and will be discussed by the LEWP at a subsequent meeting.

- to assess whether adjustments of the legal framework or common guidelines for cooperation in crises situations, e.g. pandemic crises, are necessary, as well as with regard to new technologies impacting cross-border law enforcement cooperation,
- to step up support for and strengthen the role of enhanced regional forms (structures) of cooperation, such as PCCCs, joint police stations and joint training sessions, while ensuring their efficient cooperation with SPOCs.

CALLS ON EUROPOL:

- to continue to support Member States in their efforts by further enhancing the roll-out of the SIENA,
- to explore, together with other stakeholders, the possibilities for advancing mobile solutions (or for interconnecting existing solutions), in order to allow for swift and secure communication between field officers and investigators.

CALLS ON CEPOL:

- to assist Member States in law enforcement training in order to build officers' capacities, in particular legal knowledge, with regard to cross-border law enforcement cooperation.

CALLS ON FRONTEX:

- to support law enforcement authorities of EU Member States and Schengen Associated Countries in managing their external borders to provide a high level of security for all EU citizens.