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NOTE

From: Presidency
To: Delegations

No. prev. doc.: 14665/21 + COR 1
No. Cion doc.: COM (2021) 780 final

Subject: Council Recommendation on operational police cooperation
Explanatory note on the amendments made

Courtesy translation

The purpose of this explanatory note - which is not intended to be exhaustive - is to present to the delegates of the Police Working Party (LEWP-P) the overall changes proposed by the Presidency, drawn up on the basis of the recommendations and amendments made by the Member States, the clarifications provided by the European Commission and the clarifications provided by the Council's Legal Service.

It should first be pointed out that the Presidency proposes to delete the citation referring to an opinion of the European Parliament on the recommendation. Indeed, a recommendation does not require consultation of the European Parliament.

Recitals

The recitals respond to the concerns expressed by a significant number of Member States on the prerogatives of territorial sovereignty and the respect of national provisions and European Union rules. In any case, a recital 16 (a) has been added which refers to EU regulations on compliance with data protection rules. Furthermore, recital 16 underlines that the recommendation is part of the EU legal framework, in particular the Convention implementing the Schengen Agreement (CISA) and national provisions. In addition, a recital 15 is added, which recalls that the recommendation does not, of course, call into question the ability of Member States to regulate in detail the details of their bilateral and multilateral cross-border cooperation.

Furthermore, other additions were considered useful, such as a general reference to operational police cooperation in recital 1 and the need to give guidance on the statistical data (non-personal data) to be compiled by the Member States.

Finally, it should be noted that the Legal Service of the Council should soon transmit its legal analysis of the recitals relating to the Schengen acquis (new recitals 17 to 24).

Definitions

Only minor changes have been made to the section on definitions, as these definitions refer to European cooperation mechanisms such as the CAAS, the Schengen Borders Code or the so-called Prüm decisions of 23 June 2008. The concepts of "cross-border pursuit" or "cross-border surveillance", for example, do not seem to raise any particular difficulties.

Only the term "intra" has been replaced by "internal" to give rise to the expression "internal EU borders area", which does not change the meaning of the expression "intra EU borders area".

Obstacles to operational cooperation in police operations in another Member State

With regard to cross-border prosecutions, it seemed useful to refer to the offences referred to in the Convention implementing the Schengen Agreement. The latter establishes a list of offences and also refers to the offences that may give rise to extradition. An addition has therefore been made to the latter.

In addition, and in order to meet the constitutional requirements of a number of Member States with regard to the power of arrest, an amendment has been made to section 2.1(b) iii and other sections. It expressly refers to the constitutional provisions of the Member States and uses the expression "stop and provisionally detain" instead of "stop, arrest or provisionally detain". Moreover, the CAAS does not refer to a power of arrest that would be conferred on the police officers carrying out the pursuit but on the authorities of the Member State in which the pursuit is carried out.

As regards cross-border surveillance, the Presidency does not recommend any changes at this stage. The Presidency has taken note of the comments made on the provisions on judicial procedures in the context of cross-border surveillance and invites the Member States concerned, if they so wish, to propose wording which takes account of this specificity.

Furthermore, with regard to joint operations, several delegations stressed the need to remove technical and legal obstacles with regard to communications and exchanges of information, which has been taken into account in the proposed new wording.

Sections 3 and 4 on anti-smuggling and anti-trafficking provisions against the smuggling of migrants and trafficking in human beings

Several delegations considered the fight against migrant smuggling and trafficking in human beings essential also for the purpose of combating irregular migration. However, they also questioned the relevance of sections 3 and 4 as the recommendation covers other crimes (see the list in the appendix to the recommendation).

At this stage, the Presidency does not recommend any changes to these parts but invites the Council's Legal Service to check whether these provisions are appropriate in the proposed Recommendation.

Joint police and customs stations

Almost all Member States that intervened on this section expressed their wish to maintain the name of police and customs cooperation centres (PCCC). The Presidency has therefore reverted to the traditional name of PCCCs instead of joint police and customs stations. This semantics makes sense as several delegations indicated that there are other types of police structures established at bilateral level. The Presidency therefore proposes to amend 5. (b) by indicating that Member States may strengthen their cooperation through, inter alia, "joint police stations".

Furthermore, almost all Member States have stressed the essential role of the PCCCs in exchanging information and supporting the authorities. In this context, the PCCCs cannot perform operational tasks but should be able to continue to exchange information and support the authorities on the ground. The Presidency therefore proposes that the language be changed to emphasise the role of the PCCCs as "facilitators" of joint operations. The verb "carrying out" is thus replaced by the verb "facilitating" in 5. (a). i ("facilitating, supporting and coordinating joint operations in intra-EU borders areas").

Platform for the coordination of joint operations

This part of the recommendation gave rise to a great many questions from delegations, particularly on the organisation of the platform. In any case, a significant number of Member States expressed the wish that this platform should "support" the Member States. The Presidency therefore proposes to change the name of this structure to "common support platform for joint operations".

The tasks listed in the text remain unchanged, but the Commission is expected to provide further explanations on the organisation and implementation of the platform's tasks.

With regard to the Single Point of Contact (SPOC), several delegations questioned the role of this structure. The Presidency therefore proposes that the Member States provide their comments and proposals on this role and forward a drafting proposal to this effect.

Ensuring effective access to information and communication

This section has not given rise to any particular difficulties, as there is agreement on the need to facilitate access to information on the ground for internal security forces. 7(b) is somewhat modified to take account of the fact that other technical devices than Europol's Innovation Lab may be used, which of course does not call into question its relevance.

Common training and professional development in the field of cross-border operational cooperation

There was also a strong consensus among the Member States in this section that training should be encouraged, in particular with the support of CEPOL, the role of the agency having been stressed on several occasions. On the other hand, several delegations indicated that, due to the very heterogeneous nature of law enforcement training in each of the EU Member States, a total alignment would simply not be possible. Instead, Member States should commit themselves to harmonise and "move towards" a certain alignment of their initial and continuous training. Therefore, the Presidency proposed to revise the language of the Recommendation by mentioning the "seek to align".

Furthermore, it should be noted that a distinction has been made in this section between "cadets" and "police officers", the term "cadets" referring to the initial training dimension.

Final provisions

All Member States have underlined the extremely tight deadlines contained in the Recommendation, i.e. the six-month deadline.

The Presidency therefore proposes an extension of the deadlines for the adoption of the revised national provisions and the revision of the agreements to two years (paragraph cbis). The deadline for the evaluation of the recommendation is also extended to two years. On the other hand, the 6-month deadline for initiating the procedure for changing the required national measures ("initiate a process") and no longer for "taking the necessary measures" is retained.

These revised deadlines should allow Member States to take the appropriate measures according to a timeframe imposed by the work of modified drafting and renegotiation of agreements, with some texts also having to be submitted to the legislator for revision.
