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NOTE

from :	Presidency
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Subject :	Discussion paper on the future Standing Committee on Internal Security (COSI) – Constitutional Treaty, art.III-261

I. Introduction

1. Following the discussion of the informal JHA Ministers' meeting of 28 January 2005, the Presidency hereby submits a discussion paper to continue the preparation of the implementation, the structuring and the functioning of the future Standing Committee on Internal Security (COSI). The current document looks at the general context on internal security as set out in the Constitutional Treaty, the tasks that follow thereof and options how these tasks could be dealt with.
2. The annex to this document includes Articles of the Constitutional Treaty that have a relevance for the current subject.

II. Definitions and tasks

3. With a view to clarifying the debate, it seems useful to try to define some of the elements set out in Article III-261 of the Constitutional Treaty, which sets up the future committee:

4. The definition of "internal security" should take account of the fact that the Constitutional Treaty abolishes the different pillars and thereby provides for a more integrated concept of "internal security".

Hence, combining the provisions of different Articles of the Constitutional Treaty¹, "internal security" should at least include

- the prevention and combating of crime,
- the prevention of the terrorist threat, the protection against a terrorist attack and the assistance in the event of a terrorist attack (terrorism solidarity clause)
- intelligence exchange
- public order management
- the prevention and combating of criminal offences such as illegal immigration and trafficking in persons
- the provision of an integrated management system for external borders as a major factor for preventing (certain) forms of crime within the EU
- and crisis management with cross-border effects within the EU (including the disaster solidarity clause).

5. Thus, operational cooperation on internal security could be defined as action related to concrete cases / events / crisis / phenomena, that require a trans-national approach, whereby all the concerned authorities of the Member States competent at national level for internal security issues collaborate with each other, i.e. in a multi-disciplinary and multi-national approach together with the competent Union bodies.

¹ See Articles I-42, I-43, III-257 (3), III-263, III-265 (1)(c), III-267 (2)(c) and (d), III-329.

The definition of internal security implies that the operational cooperation requires the involvement of police and judicial authorities but also in some respects customs and border control authorities and other, including administrative services specialising in or able to contribute to the prevention and combating of criminal offences. With regard to operational crisis management, it should be examined on the basis of the arrangement required by the Hague Programme (deadline June 2006) how to reach an integrated approach considering both civil protection and law enforcement issues.

It shall be clear, from various provisions of the Constitutional Treaty², that notwithstanding certain competences of the concerned Union bodies, offices and agencies, the actual operational activities on internal security remain Member States' tasks.

6. It seems therefore also logical that the future committee is not directly *in charge of conducting* operational activities but shall ensure that operational cooperation is promoted and strengthened. This could be described as providing the appropriate framework, tools, policy, implementation and evaluation to allow / oblige the competent authorities to cooperate in areas of common interest or threat, covering all subjects which are relevant for internal security. Furthermore, facilitating coordination of the action of Member States could be defined as provide the appropriate EU bodies and support required to guarantee the success of Member States' contributions at a trans-national level. This includes coordinating the contribution of actors such as Europol, Eurojust, European Border Agency, SitCen, CEPOL, Commission / OLAF...

These tasks also imply a responsibility for the committee to ensure that such operational cooperation is delivered. And that means that COSI should be informed or be able to obtain information about shortcomings or failures of the system (by monitoring, measuring performance, evaluations) and have the mandate to direct action in order to address these shortcomings.

² See Articles I-5 (1), III-262, III-273 (2), III-276 (3), III-436 (1)(a).

III. Options

7. In an attempt to draw up options for the future COSI's configuration, all possible tasks related to “internal security” could be clustered as follows, on the basis of the relevant provisions of the Constitutional Treaty:
 - (a) legislative functions
 - (b) strategic functions and in particular elaborating an EU plan for internal security
 - (c) solidarity clause related functions
 - (d) operational planning functions
 - (e) evaluation functions
 - (f) external relations.

8. The first option would be to limit the COSI's functions to the setting up of joint (police, customs, judicial,...) operations and actions (function (d)). It includes the coordination between the different operations/actions, meaning identifying and analysing the needs for such operations/actions (based on threat assessments), setting priorities, define the actions to be taken, set out the planning, evaluate and restart the cycle.

This function covers the implementation of the intelligence model, COSPOL, the organisation of the Joint Customs Operations, including ensuring the involvement of Eurojust when and where necessary.

It is essentially the work requested by the Council, in its decision of 19 November 2004, from the Police Chiefs Task Force except that it would not be limited to police cooperation but have a multi-disciplinary approach (even if this multi-disciplinary character might not be present in each and every operation).

9. The second option would be to mandate the COSI with functions (b) to (f), i.e. all functions except the legislative one. This would probably be more compliant with the variety of tasks associated by the Constitutional Treaty with "internal security", as indicated above. The legislative function would be reserved for the relevant working groups. A specialised committee could nevertheless be responsible for the coordination of all legislative work related to “internal security”. Without prejudice to the exact relationship between these different parties, it would seem necessary to build in a mechanism to guarantee that legislative developments correspond to the needs identified by COSI.

10. The third option would consist in requesting COSI to fulfil all functions listed. Depending on the relationship with the different working groups, this might require the COSI to meet in different settings to ensure that the relevant experts can participate. It remains to be seen whether the need for coordination between such settings would be very different (easier or more difficult) than coordination between COSI and other parties (i.e. specialised legislative committee on internal security). Supposing that the head of delegation in COSI would always be the same and taking into account the obvious need for COSI to speak with one voice and be inherently consistent, it might require at least more efforts for national coordination.

IV. Other issues

11. Depending on the option chosen, the role and mandate of the existing working groups (JHA, civil protection), the Article 36 Committee, the Strategic Committee on Immigration, Asylum and Frontiers (SCIFA) and the Police Chiefs (Task Force) will have to be examined. Also, in order to ensure the necessary coordination and cooperation, the relationship with second pillar parties will need to be defined.
12. Equally depending on the option chosen, the composition of the COSI needs to be reflected upon. The "standing" character of the committee may require that its members be residential, and be assisted by the relevant experts, depending on the subjects of the agenda. In that sense, it could be proposed that once per Presidency, the head of delegation be "joined" by the Police Chief / the Director General responsible for criminal justice policy / the Customs Director General ..., or, whenever appropriate, a combination of some or all of them.
The presence of the Union bodies, offices and agencies should be defined by the subjects on the agenda.

V. Discussion

13. On the basis of developments in chapters I.-IV., delegations of the Article 36 Committee are invited
- i) to indicate if “definitions and tasks” under II. correspond also to Member States’ and Commission’s views;
 - ii)
 - a) to express their preference and comments concerning the 3 options under III.,
 - b) and if they prefer option 1) under III., to indicate which bodies should deal with the other functions
 - c) and if they prefer options 1) or 2) under III.,
 - to indicate if a specialized legislative committee for internal security should be set up to coordinate all legislative aspects
 - and how the relationship between such a committee and COSI should be established (i.e. reporting to COSI, or at the same level as COSI, both reporting to Coreper) ;
 - iii)
 - a) to confirm that the “standing” character requires the members of the COSI to be residential
 - b) and to reflect on the idea that each Member State should be represented by one single head of delegation, with regard to the variety of fields and tasks inherent to the concept of “internal security”
 - iv) to confirm that EU bodies (Europol, Eurojust,...) should not be full/permanent members of the COSI and that their participation is depending on the subject on the agenda of COSI.

Excerpt from the Constitutional Treaty

I-5 (1): "The Union shall respect the equality of Member States before the Constitution as well as their national identities, inherent in their fundamental structures, political and constitutional, inclusive of regional and local self-government. It shall respect their essential State functions, including ensuring the territorial integrity of the State, maintaining law and order and safeguarding national security."

I-23 (1): "The Council shall, jointly with the European Parliament, exercise legislative and budgetary functions. It shall carry out policy-making and coordinating functions as laid down in the Constitution."

I-42 (1)(c): "Union shall constitute an area of freedom, security and justice: (...) by operational cooperation between the competent authorities of the Member States, including the police, customs and other services specialising in the prevention and detection of criminal offences."

I-43 (Solidarity clause) :

"1. The Union and its Member States shall act jointly in a spirit of solidarity if a Member State is the object of a terrorist attack or the victim of a natural or man-made disaster. The Union shall mobilise all the instruments at its disposal, including the military resources made available by the Member States, to:

- (a) – prevent the terrorist threat in the territory of the Member States;
 - protect democratic institutions and the civilian population from any terrorist attack;
 - assist a Member State in its territory, at the request of its political authorities, in the event of a terrorist attack;
 - (b) assist a Member State in its territory, at the request of its political authorities, in the event of a natural or man-made disaster.
2. The detailed arrangements for implementing this Article are set out in Article III-329."

III-257 (3): "The Union shall endeavour to ensure a high level of security through measures to prevent and combat crime, racism and xenophobia and through measures for coordination and cooperation between police and judicial authorities and other competent authorities, as well as through the mutual recognition of judgments in criminal matters and, if necessary, through the approximation of criminal laws."

III-258: "The European Council shall define the strategic guidelines for legislative and operational planning within the area of freedom, security and justice."

III-260: "Without prejudice to Articles III-360 to III-362, the Council may, on proposal of the Commission, adopt European regulations or decisions laying down the arrangements whereby Member States, in collaboration with the Commission, conduct objective and impartial evaluation of the implementation of the Union policies referred to in this Chapter by Member States' authorities, in particular in order to facilitate full application of the principle of mutual recognition. The European Parliament and national Parliaments shall be informed of the content and results of the evaluation."

III-261: "A standing committee shall be set up within the Council in order to ensure that operational cooperation on internal security is promoted and strengthened within the Union. Without prejudice to Article III-344, it shall facilitate coordination of the action of the Member States' competent authorities. Representatives of the Union bodies, offices and agencies concerned may be involved in the proceedings of this committee. The European Parliament and national Parliaments shall be kept informed of the proceedings."

III-262: "This Chapter shall not affect the exercise of the responsibilities incumbent upon Member States with regard to the maintenance of law and order and the safeguarding of internal security."

III-263: "The Council shall adopt European regulations to ensure administrative cooperation between the relevant departments of the Member States in the areas covered by this Chapter, as well as between those departments and the Commission. It shall act on a Commission proposal, subject to Article III-264, and after consulting the European Parliament."

III-265 (1)(c): "The Union shall develop a policy with a view to the gradual introduction of an integrated management system for external borders."

III-267 (2)(c) and (d): "For the purposes of paragraph 1, European laws or framework laws shall establish measures in the following areas:

- (c) illegal immigration and unauthorised residence, including removal and repatriation of persons residing without authorisation;
- (d) combating trafficking in persons, in particular women and children."

III-273 (2): "In the prosecutions referred to in paragraph 1, and without prejudice to Article III-274, formal acts of judicial procedure shall be carried out by the competent national officials."

III-276 (3): "Any operational action by Europol must be carried out in liaison and in agreement with the authorities of the Member State or States whose territory is concerned. The application of coercive measures shall be the exclusive responsibility of the competent national authorities."

III-329:

"1. Should a Member State be the object of a terrorist attack or the victim of a natural or man-made disaster, the other Member States shall assist it at the request of its political authorities. To that end, the Member States shall coordinate between themselves in the Council.

2. The arrangements for the implementation by the Union of the solidarity clause referred to in Article I-43 shall be defined by a European decision adopted by the Council acting on a joint proposal by the Commission and the Union Minister for Foreign Affairs. The Council shall act in accordance with Article III-300(1) where this decision has defence implications. The European Parliament shall be informed.

For the purposes of this paragraph and without prejudice to Article III-344, the Council shall be assisted by the Political and Security Committee with the support of the structures developed in the context of the common security and defence policy and by the Committee referred to in Article III-261; the two committees shall, if necessary, submit joint opinions.

3. The European Council shall regularly assess the threats facing the Union in order to enable the Union and its Member States to take effective action."

III-436 (1)(a): "The Constitution shall not preclude the application of the following rules:

(a) no Member State shall be obliged to supply information the disclosure of which it considers contrary to the essential interests of its security."

