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from: General Secretariat
to: COREPER/Council

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Subject: Council Framework Decision 2006/960/JHA on simplifying the exchange of
information and intelligence between law enforcement authorities of the Member
States of the European Union ("Swedish Framework Decision")
- Assessment of compliance pursuant to Art. 11(2)
- Report

1. At its meeting on 22 September 2011, the Working Group on Information Exchange and Data Protection (DAPIX) discussed and in principle agreed on the draft report on the assessment of Member States' compliance with the provisions of Council Framework Decision 2006/960/JHA. Further comments on the report submitted to the Presidency in the wake of that meeting were set out in doc. 13970/2/11 REV 2 JAI 606 DAPIX 112 CRIMORG 142 ENFOPOL 298 ENFOCUSTOM 95. Member States were invited to agree on the new amendments by 14 October 2011 and raised no objections.
2. Consequently, Coreper is invited to submit the draft report as set out in the Annex to this note to the Council and to suggest that it be adopted as an "A" item on its agenda.

Council Framework Decision 2006/960/JHA on simplifying the exchange of information and intelligence between law enforcement authorities of the Member States of the European Union ("Swedish Framework Decision")

- Assessment of compliance pursuant to Art. 11(2)

- Report

1. Introduction

Council Framework Decision 2006/960/JHA of 18 December 2006 (SFD)¹ seeks to ensure that certain information vital for law enforcement authorities is exchanged expeditiously within the Union. At the same time, it is in the common interest of Member States to strike an appropriate balance between fast and efficient law enforcement cooperation and agreed principles and rules on data protection, fundamental freedoms, human rights and individual liberties.

Framework Decision 2006/960/JHA, Art. 11 (1) provides that Member States shall take the necessary measures to comply with its provisions before 19 December 2008.

Article 11 (2) provides that a report on the operation of the Framework Decision should be submitted to the Council by the Commission before 19 December 2010. Furthermore, it is incumbent on the Council to assess the extent to which Member States have complied with the provisions of the Framework Decision. This assessment shall be done before 19 December 2011.

2. Objective and scope of the legislation

The "Swedish Framework Decision" (SFD) implements the "principle of availability". Member States shall ensure that conditions for exchange of information are not stricter at cross-border than at national level, even with regard to the need of a judicial agreement or authorisation prior to providing information in which case the competent authority shall apply for its decision the same rules as in a purely internal case.

¹ Council Framework Decision 2006/960/JHA of 18 December 2006 on simplifying the exchange of information and intelligence between law enforcement authorities of the Member States of the European Union, published in OJ L 386, 29.12.2006, p. 89, corrected by Corrigendum, OJ L 75, 15.3.2007, p. 26

Providing the broad legal basis for information exchange between Member States for the purpose of conducting criminal investigations or criminal intelligence operations, the SFD aims at an effective and expeditious exchange of information and intelligence between national law enforcement authorities. It sets out common rules on procedures, time limits and grounds for refusal and proposes standard forms for the exchange of information.

For the purpose of the Framework Decision, the concept of “information and/or intelligence” covers information or data

- which is held by law enforcement authorities
- which is held by public authorities or by private entities and which is available to law enforcement authorities without taking coercive measures.

3. Practical aspects of implementation

"Guidelines"² were set up concerning the implementation and the use of the Framework Decision. Their annexes set out national fact sheets (one per Member State) and draw up lists of competent law enforcement authorities, contact details in cases of urgency and bilateral or other agreements maintained. Furthermore, they set out a non-compulsory request form for information and intelligence.

The content of these categories depends on national legislation and some practical guidance is set out in the national fact sheets in Annex III to the Guidelines. Without being limitative, these lists set out the type of information available in the context of the Framework Decision.

In accordance with Article 6(1) of the Framework Decision, exchange of information and intelligence applying the rules of the Framework Decision may take place via any existing channel of international law enforcement cooperation.

² Guidelines on the implementation of Council Framework Decision 2006/960/JHA, see doc. 9512/1/10 REV 1 DAPIX 59 CRIMORG 90 ENFOPOL 125 ENFOCUSTOM 36 COMIX 346 + COR 1

Nonetheless, it was felt useful to draw up a list of contacts that can be used in cases of urgency (Annex V to the Guidelines).

Framework Decision 2006/960/JHA did not define the notion of urgency and Member States agreed on a reasonable approach to Art.4 (1) so to ensure that the notion of urgency is interpreted in a restricted manner. Whether a request is urgent should be evaluated on a case-by-case basis and guidance is in the Guidelines offered to determine what circumstances may be deemed as “urgent”.

Information and intelligence shall also be shared with Europol and Eurojust insofar as the exchange refers to an offence or criminal activity within their mandate. In the cooperation with Europol specific handling codes are used that differ from the conditions for use mentioned in the forms for the SFD. The Europol handling codes can be filled in when using the SIENA and when inserting data into the Europol Information System. Information and intelligence received by Europol will be processed in accordance with the specific Europol handling codes in addition to the conditions on the use expressed by the sender of the form.

4. Commission staff working paper on SFD operation

In order to comply with Council Decision 2006/960/JHA, Art. 11 (2), the Commission issued a report in the form of a Commission staff working paper on 13 May 2011.³ The Commission paper focused on the operation of the SFD in the timeframe from December 2008 until December 2010.

Almost two-thirds of the MS had transposed the SFD into domestic legislation by 31 December 2010; MS not having met the transposition deadline indicated lengthy parliamentary procedures as the main reason. MS have complied so far with the provisions on the notification of bilateral / multilateral cooperation agreements and on National Contact Points (NCP) as well as on competent authorities within the meaning of SFD, Art. 2 (a).

³ See doc. 10316/11 COR1 GENVAL 56 ENFOPOL 155 COMIX 336 ENFOCUSTOM 47
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The majority of MS stated that they do not draw on the SFD on a regular basis for requesting information. In particular, the forms annexed to the SFD for requesting and submitting information were not generally used as this procedure is considered complex and cumbersome. However, information on the urgency procedure proved that the underlying principles of the Framework Decision had been implemented.

The Commission paper concludes that the Framework Decision had not yet reached its full potential. Its importance, however, would be enhanced by further information exchange in the framework of the "Prüm Decisions" as well as by the IMS interoperability coordination project (UMF II).

5. Assessment of compliance

Reliable quantitative information of law enforcement information exchange with explicit reference to the SFD is rather scarce due to the fact that not all Member States have implemented the Decision. Therefore, this report cannot provide a comprehensive picture of the operation of the SFD.

On the other hand, the fact that its underlying principles, in particular with regard to the urgency procedure, had been implemented leads to the assumption that the main goal of the Decision is more frequently reached than statistically proven.

Member States in general confirmed the Commission conclusion that the Framework Decision has not yet reached its full potential. While assessing to what extent the provisions of the SFD are complied with, Member States were therefore invited by the Presidency to bear in mind three main questions:

(a) Does the SFD achieve its goal, i.e. the simplifying of cross-border information exchange between law enforcement authorities?

The general standards for cross-border information exchange asked for by the Decision were often already in place. Therefore, it was stated that the process had not notably been improved. From a specific technical point of view, it has to be noted that the required use of form A and B for submitting and requesting information complicates the information exchange as they are deemed to be cumbersome. The majority of Member States prefer a free-text exchange of messages.

However, when it comes to the question whether Member States do apply the same conditions for cross-border and internal information exchange, it can be stated that conditions applied for cross border information exchange are not stricter than those applied for information exchange on national level.

(b) Do administrative burdens affect compliance?

The set time limits in general are considered as helpful, in particular when it comes to urgent requests where procedures are in place so that they can be replied to within at most eight hours. Provisions such as providing reasons for being unable to reply to a request within the respective time limits are not considered as an administrative burden.

However, where sharing of information or intelligence with Europol and Eurojust was not conceived as a genuine business need, it was considered as an unwanted duplication of efforts if information exchange has not been done via SIENA in the case of Europol, or as without added value in the case of Eurojust.

(c) Does more spontaneous exchange of information and intelligence take place under SFD?

Spontaneous information exchange is considered as very important for cross-border police cooperation. The specific SFD modalities are flexible to allow for more spontaneous cross-border information exchange when this could facilitate the detection, prevention or investigation of offences according to the European arrest warrant. Messages are exchanged through all existing channels but it is rarely specified that this is done on the basis of the SFD.

6. Conclusions

Member States state that the SFD has not yet reached its full potential. This could be reached by fully implementing it and further simplifying the forms but also by developing a structured information exchange by means *i.a.* of the Universal Messaging Format (UMF) and by focusing on SIENA as the preferred channel for information exchange.

Furthermore, from an organisational point of view, it was suggested to further the implementation of Single Points of Contacts (SPOC) and to raise awareness at operational level of the possibilities and modalities of cross-border information exchange for law enforcement purposes.
