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LIMITE

ENFOPOL 50
SCHENGEN 6
IXIM 23
COSI 32
CT 21
CRIMORG 14
ENFOCUSTOM 17
JAI 124
COMIX 49

NOTE

From:	Presidency
To:	Delegations
No. prev. doc.:	14665/21 + COR 1
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Subject:	Proposal for a COUNCIL RECOMMENDATION on operational police cooperation

Delegations will find in the Annex a revised compromise text of the Council Recommendation on operational police cooperation drawn-up by the Presidency on the basis of the discussion in the Law Enforcemement Working Party (Police) on 7 February 2022 and subsequent written comments of the delegations.

2021/0415 (CNS)

Proposal for a

COUNCIL RECOMMENDATION

on operational ~~police~~ **law enforcement** cooperation

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 87(3) and Article 89, in conjunction with Article 292,thereof,

Having regard to the proposal from the European Commission,

~~1~~,

Whereas:

(1) ~~For the purposes of this Recommendation, 'operational police cooperation' means cooperation involving all the Member States' competent law enforcement authorities, including police, gendarmes, border guards, customs and other specialised law enforcement services in order to prevent, detect and investigate criminal offences. 'Cross-border operational police cooperation' covers (i) cross-border actions between two or more neighbouring Member States (e.g. during a hot pursuit) and (ii) trans-national actions between non-neighbouring Member States (e.g. the deployment of police officers in another Member State during touristic season or a mass-event) or neighbouring Member States in a non-border area.~~ **Cross-border law enforcement cooperation is essential to address security threats in the Schengen area, and ensure its good functioning. Criminals must not be able to escape law enforcement authorities simply by moving from one Member State to another. Enhanced cross-border cooperation between all the competent law enforcement authorities of the Member States will help to improve the prevention, detection and investigation of criminal offences in the EU. This cooperation covers cross-border actions between two or more Member States, such as hot pursuits and**

~~1~~ […]

cross-border surveillances and trans-national actions, such as joint operations, which involve the deployment of ~~police~~ law enforcement officers in other Member States.

(2) Cross-border surveillance and hot pursuits are indispensable operational ~~police~~ **law enforcement** cooperation instruments without which criminals can escape the ~~police~~ **law enforcement authorities** by crossing the border, taking advantage of the change of jurisdiction and absence of continuity of ~~police~~ **law enforcement** action. The existing limitations that some Member States have put in place should be addressed, as they create obstacles for such operations to take place into their territory. It is also necessary**, while respecting the compe~~n~~teeences of judicial authorities of each Member State,** to adjust certain rules of engagement in cross-border ~~police~~ **law enforcement** operations to monitor and arrest criminals in surveillance, hot pursuits, and joint operations.

(3) Setting up permanent joint patrols and other joint operations' capabilities in intra-EU border areas is necessary to match the criminal activities and the challenges that the permanent and growing mobility of people, goods and services inside the Union entails for ~~police forces~~**law enforcement operational cooperation**. By exchanging information, existing structures such as the Police and Customs Cooperation Centers (PCCCs) play a major role in the fight against cross-border criminality. Where relevant, the PCCCs should be able to engage in joint patrols and other joint operations based on shared risk analysis and needs assessment, in accordance with the applicable legal requirements, in order to prevent, detect, and support investigations into cross-border crimes conducted in intra-EU border areas.

(4) ~~"Statistics" refer inter alia to non personal data communicated each year in the following fields : number of patrols, number of cross-border hot pursuits, surveillances, and joint operations, number of personnel involved, types of missions, State of origin and host State of the mission. Other relevant non personal data could be, when appropriated, communicated.~~ **In order for the Member States, and the European Commission and the European Parliament to acquire an accurate quantitative picture of the state of play on the implementation of cross-border law enforcement cooperation activities in the EU, Member States should collect and report statistical data on their operational cooperation on a yearly basis. This non personal data will provide a thorough knowledge and understanding of the needs of the Member States and any potential issues that need to be addressed at a European Union Level.**

(5) In order to ensure consistency, the definitions contained in this Recommendation should, where relevant, be based on and be ~~interperted~~ **interpreted** in line with the applicable provisions of other acts of Union law, in particular the CISA.

(6) Criminal networks**, including those** active in migrant smuggling and trafficking in human beings take advantage of the absence of internal borders in the area without controls at internal borders **to pursue their criminal endeavours**~~to facilitate the unauthorised movements of irregular migrants and exploit the vulnerable situation of victims for profit~~. **In the absence of internal border controls, targeted joint patrols and other joint operatgions are a valuable tool to counter all types of cross-border crime, including trafficking in human beings, migrant smuggling, cross-border crime linked to irregular migration.** ~~An effective Union return policy requires efficient and proportionate measures for the apprehension and identification of irregular migrants. In that regard, coordination, in particular by using the mechanisms referred to in Article 6(3) of Directive 2008/115/EC of the European Parliament and of the Council[2], should be encouraged, so as to contribute to preventing and responding to unauthorised movements of irregular migrants and help address the threats to public policy or internal security, while limiting the impact on the movement of *bona fide* travellers. In the absence of internal border controls, targeted joint patrols and other joint operations in intra-EU border areas are a valuable tool to counter migrant smuggling and trafficking in human beings, to prevent and detect illegal staying and cross-border crime linked to irregular migration, and to facilitate the effective practical implementation of bilateral readmission agreements, while respecting Commission Recommendation (EU) 2017/432.[3]~~ Combatting trafficking in human beings effectively requires police cooperation in both national and transnational contexts, in order to identify and support victims, as well as to improve prosecution and conviction of traffickers.

~~[2] Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals (OJ L 348, 24.12.2008, p. 98).~~

~~[3] Commission Recommendation (EU) 2017/432 of 7 March 2017 on making returns more effective when implementing the Directive 2008/115/EC of the European Parliament and of the Council. OJ L 66, 11.3.2017, p. 15–21.~~

(7) Where relevant and appropriate Member States may implement the recommendations on cross-border operational ~~police~~ **law enforcement** cooperation in the context of the European Multidisciplinary Platform Against Criminal Threats (EMPACT) to tackle identified and prioritised threats posed by organised and serious international crime. For instance, targeted joint patrols ~~in intra-EU border areas~~ **are a flexible instrument for which relevant authorities can take an initiative based on intelligence led policing. Such targeted joint patrols** could **also** be included by Member States as part of operational actions in the operational action plans (OAPs) of EMPACT to tackle specific priority crime areas~~, such as drugs trafficking or organised property crime (for instance organised pickpocketing)~~.

(8) The limited availability of ~~police~~ **law enforcement** forces that Member States can deploy abroad and the lack of coordinated deployment based on prior joint analysis can render ~~police~~ **law enforcement** deployments in other Member States ineffective. A ~~common~~ support platform where Member States can exchange on their needs and priorities for joint patrols and other joint operations with a pan-European dimension could facilitate such operations in an efficient and effective manner, so as to maintain and enhance public order and safety, to prevent criminal offences, including by serious and organised crime groups, and to help address specific crime waves in key locations, at specific times and in specific situations.

(9) Communication and access to available information are critical for successful cross-border operational cooperation. ~~Front line~~**Law enforcement** officers acting in another Member State should have real-time access through mobile solutions, such as handheld devices or in-car mounted ~~police~~ **law enforcement** computers, to information held in Union information systems, through the European Search Portal (ESP), and to their relevant national databases, in line with applicable access rights and the applicable Union and national legislation. They should also be equipped with reliable and secure, real-time interconnectable mobile communication means, such as instant messenger tools, that function across borders in order to communicate directly with their authorities and those of the host Member State. Member States should, where appropriate, make use of the technical solutions to be provided inter alia by the EU Innovation Hub **for internal security** or Europol's innovation lab (and the Core Group on Secure Communication) **as well as the ENLETS messenger and the Broadway project,**, to ensure the interconnectivity of secure communication means across borders that should as a minimum enable the secure use of real-time mobile communication

means, as well as the geolocation of their ~~police~~ **law enforcement** vehicles, for example through GPS tracking or drones, during a cross-border ~~police~~ **law enforcement** operation.

(10) Effective cross-border operational ~~police~~ **law enforcement** cooperation requires moving towards a common Union **law enforcement** culture ~~of policing~~. Setting up joint initial trainings and exchange programmes between ~~police~~ **law enforcement** cadets on matters relating to such cooperation and continuous development courses on those matters for ~~front line~~**law enforcement** officers and crime investigators are instrumental in building skills, knowledge and confidence. It is important that Member States ~~adjust and~~**where appropriate,** seek to align the curricula of their **relevant** national ~~police~~ **training** academies, in all levels of training in order to include accredited cross-border operational ~~police cooperation~~**law enforcement** courses, and foresee career paths for cadets and officers who graduate from these trainings. Member States should also continue to make best use of the European Union Agency for Law Enforcement Training (CEPOL) by providing their training needs and support the agency's activities, contributing to align their training portfolio to the priorities related to cross-border cooperation set in the EU Strategic Training Needs Assessments (EU-STNA). They should reflect on the possibility to create large scale and long term pan-European joint training and exchange programmes for ~~police~~ **law enforcement** cadets and officers in the field of cross-border operational ~~police~~ **law enforcement** cooperation.

(11) Given the importance of coordination and cooperation in relation to the issues addressed in this Recommendation, and in particular its implementation, there will be a standing discussion point on cross-border operational ~~police~~ **law enforcement** cooperation in the relevant working party of the Council. That working party should serve as a permanent forum for Member States to discuss such issues, including the convergence of their rules and agreements, other measures to address obstacles to the effectiveness and efficiency of cross-border ~~police~~ **law enforcement** cooperation operations, reporting on the progress made, as well as issues relating to the necessary guidance and good practices.

(12) Effect should be given to this Recommendation within a reasonable timeframe. Within six months of its adoption, Member States should initiate a process to ~~change~~ **review** their national rules and bi- and multilateral agreements with other Member States, ~~as~~ **where** relevant **and appropriate**, in order to give effect to the recommended measures and subsequently complete that process ~~as soon as~~**within two years.** ~~reasonably possible.~~

(13) The progress made in giving effect to this Recommendation should be reviewed after a certain time period. Therefore, at the latest two years after its adoption, the Commission should evaluate such progress, with a view, i*nter alia* to deciding whether binding acts of Union law with binding force are needed in this area. Such an evaluation should be transmitted to the Council.

~~(14) Taking into account that this Recommendation does not have binding force, the Member States should give effect to the measures recommended therein in accordance with the applicable acts of Union law, especially those which have binding force. In particular, the Member States should give effect to the recommended measures in accordance with the Convention Implementing the Schengen Agreement (CISA)[4], especially by choosing the recommended options where the CISA provides for several options and by extending the scope and adopting additional provisions in implementation of and in accordance with the relevant articles of the CISA.~~

~~(15) Regional, bi- and multilateral law enforcement cooperation between Member States, in particular in the regions with shared internal borders, is essential, and therefore Member States underline that this Council document contains common recommendations for cooperation, while respecting the possibility for Member States to elaborate the details of such cooperation and provide for even closer cooperation bilaterally than the standards set forth in this document~~

~~[4] Convention Implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders (OJ L 239, 22.9.2000, p. 19).~~

~~(16) This Recommendation should not be understood as seeking to affect the rules providing for limitations, safeguards and conditions not specifically addressed in this Recommendation, that apply to the relevant cross-border operational police cooperation activities pursuant to acts of Union law with binding force, including the CISA, the Schengen Borders Code and the Prüm Council Decisions and to national law in accordance with Union law. For example, the carrying and use of service weapons, including in situations of defense of others, the use of road traffic privileges, the use of technical means for conducting cross-border surveillances and the performance of identity checks and interception of persons trying to avoid such checks, referred to in this Recommendation, may be subject to such rules which are not replicated in this Recommendation. This Recommandation is without prejudice to those rules. (16a) This Recommandation shall furthermore not have the effect of modifying the obligation to respect the fundamental rights and legal principles as enshrined in Article 6 of the TEU including the right to an effective remedy and to a fair trial as well as the high data protection standards laid down in Union law, especially in Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA.~~

~~(16b) This recommendation is without prejudice to the provisions of the Convention drawn up on the basis of Article K.3 of the Treaty on European Union, on mutual assistance and cooperation between customs administrations (Naples II).~~

(~~17~~**14**) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Recommendation and is not bound by it or subject to its application. Given that this Recommendation builds upon the Schengen *acquis*, Denmark should, in accordance with Article 4 of that Protocol, decide within a period of six months after the Council has decided on this Recommendation whether it will implement it in its national law.

(~~18~~**15**) This Recommendation, with the exception of its sections 2.1 and 2.2, constitutes a development of the provisions of the Schengen *acquis* in which Ireland takes part, in

accordance with Council Decision 2002/192/EC[5]; Ireland is therefore taking part in the adoption of this Recommendation and is bound by it, except for those sections.

(~~19~~**16**) As regards Iceland and Norway, this Recommendation constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the latter's' association with the implementation, application and development of the Schengen *acquis*[6] which fall within the area referred to in Article 1, points A and H of Council Decision 1999/437/EC.[7]

(~~20~~**17**) As regards Switzerland, this Recommendation constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis*[8] which fall within the area referred to in Article 1, points A and H of Council Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2008/146/EC[9] and with Article 3 of Council Decision 2008/149/JHA.[10]

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5 Council Decision 2002/192/EC of 28 February 2002 concerning Ireland's request to take part in some of the provisions of the Schengen acquis (OJ L 64, 7.3.2002).

6 OJ L 176, 10.7.1999, p. 36.

7 Council Decision 1999/437/EC of 17 May 1999 on certain arrangements for the application of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the association of those two States with the implementation, application and development of the Schengen acquis (OJ L 176, 10.7.1999).

8 OJ L 53, 27.2.2008, p. 52.

9 Council Decision 2008/146/EC of 28 January 2008 on the conclusion, on behalf of the European Community, of the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen acquis (OJ L 53, 27.2.2008).

10 Council Decision 2008/149/JHA of 28 January 2008 on the conclusion on behalf of the European Union of the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen acquis (OJ L 53, 27.2.2008).

(~~21~~**18**) As regards Liechtenstein, this Recommendation constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis*[11] which fall within the area referred to in Article 1, points A and H of Council Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2011/350/EU[12] and with Article 3 of Council Decision 2011/349/EU.[13]

(~~22~~**19**) As regards Bulgaria and Romania, this Recommendation, with the exception of its sections 2.1 and 2.2, constitutes an act building upon, or otherwise relating to, the Schengen *acquis* within the meaning of Article 4(2) of the 2005 Act of Accession and should be read in conjunction with Council Decisions 2010/365/EU[14] and (EU) 2018/934.[15]

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11 OJ L 160, 18.6.2011, p. 21.

12 Council Decision 2011/350/EU of 7 March 2011 on the conclusion, on behalf of the European Union, of the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen acquis, relating to the abolition of checks at internal borders and movement of persons (OJ L 160, 18.6.2011).

13 Council Decision 2011/349/EU of 7 March 2011 on the conclusion on behalf of the European Union of the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen acquis relating in particular to judicial cooperation in criminal matters and police cooperation (OJ L 160, 18.6.2011).

14 Council Decision 2010/365/EU of 29 June 2010 on the application of the provisions of the Schengen acquis relating to the Schengen Information System in the Republic of Bulgaria and Romania (OJ L 166, 1.7.2010, p. 17).

15 Council Decision (EU) 2018/934 of 25 June 2018 on the putting into effect of the remaining provisions of the Schengen acquis relating to the Schengen Information System in the Republic of Bulgaria and Romania (OJ L 165, 2.7.2018, p. 37).

(~~23~~**20**) As regards Croatia, this Recommendation, with the exception of its sections 2.1 and 2.2, constitutes an act building upon, or otherwise relating to, the Schengen *acquis* within the meaning of Article 4(2) of the 2011 Act of Accession and should be read in conjunction with Council Decision (EU) 2017/733.[16]

(~~24~~**21**) As regards Cyprus, this Recommendation, with the exception of its sections 2.1 and 2.2, constitutes an act building upon, or otherwise relating to, the Schengen *acquis* within the meaning of Article 3(2) of the 2003 Act of Accession.

HAS ADOPTED THIS RECOMMENDATION:

LEGAL FRAMEWORK

a) Taking into account that this Recommendation does not have binding force, the Member States should give effect to the measures recommended therein in accordance with the applicable acts of Union law, especially those which have binding force. In particular, the Member States should give effect to the recommended measures and they should ensure this is done in accordance with the Convention Implementing the Schengen Agreement (CISA)[17], especially by choosing the recommended options where the CISA provides for several options and by extending the scope and adopting additional provisions in implementation of and in accordance with the relevant articles of the CISA.

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16 Council Decision (EU) 2017/733 of 25 April 2017 on the application of the provisions of the Schengen acquis relating to the Schengen Information System in the Republic of Croatia (OJ L 108, 26.4.2017, p. 31).

17 **Convention Implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders (OJ L 239, 22.9.2000, p. 19).**

b) **This Recommendation should not be understood as seeking to affect the national rules providing for limitations, safeguards and conditions not specifically addressed in this Recommendation, that apply to the relevant cross-border operational ~~police~~ law enforcement cooperation activities pursuant to acts of Union law with binding force, including the CISA, the Schengen Borders Code and the Prüm Council Decisions and national law in accordance with Union law. For example, the carrying and use of service weapons, including in situations of defense of others, the use of road traffic privileges, the use of technical means for conducting cross-border surveillances and the performance of identity checks and interception of persons trying to avoid such checks, referred to in this Recommendation, may be subject to such rules which are not replicated in this Recommendation. This Recommendation is without prejudice to those rules, as it is without prejudice to what falls within the scope of judicial cooperation or what requires authorization by a judicial authority.**

c) **This Recommendation shall furthermore not have the effect of modifying the obligation to respect the fundamental rights and legal principles as enshrined in Article 6 of the TEU including the right to an effective remedy and to a fair trial as well as the high data protection standards laid down in Union law, especially in Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA.**

d) **This Recommendation does not prevent the Member States from maintaining in force or adopting rules providing for closer cooperation than the standards and measures set forth in it, provided that such rules are compatible with Union law.**

e) **This recommendation is without prejudice to the competences and powers of customs authorities in the Member States, in particular regarding the application of the Convention drawn up on the basis of Article K.3 of the Treaty on European Union, on mutual assistance and cooperation between customs administrations (Naples II).**

PURPOSE AND SCOPE

The purpose of this Recommendation is to strenghten operational cooperation between law enforcement authorities.

Operational cooperation covers situations where law enforcement authorities of a Member State operate in the territory of another Member State.

(i) cross-border actions between two or more ~~neighbouring~~ Member States (e.g. during a hot pursuit, surveillance, joint patrols or other joint operations) and

(ii) trans-national actions between ~~non-neighbouring~~ Member States (e.g. the deployment of ~~police~~ law enforcement officers in another Member State during touristic season or a mass-event). ~~or neighbouring Member States in a non-border area.~~

1. DEFINITIONS

For the purposes of this Recommendation, the following definitions apply :

(a) law enforcement authorities means police, customs and other specialised law enforcement services in relation to the prevention, detection and investigation of criminal offences. 'Cross-border operational law enforcement cooperation' covers (i) cross-border actions between two or more neighbouring Member States (e.g. during a hot pursuit, surveillance, joint patrols or other joint operations) and (ii) trans-national actions between non-neighbouring Member States (e.g. the deployment of ~~police~~ law enforcement officers in another Member State during touristic season or a mass-event) or neighbouring Member States in a non-border area.

(~~a~~**b**) 'cross-border hot-pursuit' means a ~~police~~ **law enforcement** operation whereby officers of a competent law enforcement authority of a Member State pursue in that Member State one or more persons caught in the act of committing or participating in a criminal offence and, in the course of that pursuit, cross a border with another Member State and continue the pursuit on the territory of that other Member State;

(~~b~~**c**) 'cross-border surveillance' means a ~~police~~ **law enforcement** operation whereby officers of a competent law enforcement authority of a Member State keep under surveillance, as part of a criminal investigation in that Member State, one or more persons who are suspected to have committed or participated in a criminal offence or who can lead to the identification or tracing of such suspects, and continue the surveillance in the territory of another Member State, after the person or persons under surveillance crossed the border with that other Member State; This action needs the authorization of surveillance by the state in whose territory the surveillance is about to take place.

(~~c~~**d**) 'joint operations' means ~~police~~ **law enforcement** operations, including joint patrols and other joint operations in the field of public order, public security and crime prevention, jointly carried out either in internal EU border areas or in other areas within the Union by officers of the competent law enforcement authorities of two or more Member States, whereby officers from one Member State act on the territory of another Member State;

(~~d~~**e**) 'Single Point of Contact' means the national central body responsible for international ~~police~~ **law enforcement** cooperation, referred to in Article 39(3) of the Convention Implementing the Schengen Agreement[18];

(~~e~~**f**) 'Police and Customs Cooperation Centre' means a joint law enforcement structure aimed at exchanging information and providing support to other law enforcement activities in intra-EU border areas, which a Member State has set up based on bi- or multilateral agreement with one or more neighbouring Member States, and which is located in the immediate vicinity of the borders between the Member States concerned;

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18 The definition of Single Point of Contact (SPOC) may be updated in accordance with the Commission proposal for a Directive on information exchange between law enforcement authorities of Member States, put forward together with the present proposal for a Council Recommendation.

(g) 'Statistics' refer to the non personal data collected by Member States, aggregated by [Member States] / [Commission] and reported to Member States, the European Commission and the European Parliament on the number and different types of cross-border ~~police~~ law enforcement cooperation operations (i.e. cross-border hot pursuits, surveillances, and joint operations) conducted during the year, the areas where the operations took place and number of Member States involved, the number of assets (i.e. number of personnel and equipment) deployed, the number of checks performed and investigations initiated, and the number of suspects arrested. Other relevant non personal data could be communicated, when appropriate.

~~(f) 'Internal EU borders area' means the geographic area in the immediate vicinity of internal borders between Member States.~~

2. ADDRESSING OBSTACLES TO OPERATIONAL COOPERATION WHEN ~~POLICE~~ LAW ENFORCEMENT OFFICERS OPERATE IN ANOTHER MEMBER STATE

2.1. Cross-border hot pursuit:

(a) Member States should:

i. ensure that the types of crimes eligible for cross-border hot pursuits into their territory cover **criminal offenses listed in the Annex to this recommendation as well all other criminal offenses which may give rise to extradition** ~~extraditable offenses such as the criminal offenses listed in the Annex to this Recommendation~~;

ii. allow for the conduct of cross-border hot pursuits into their territory across land, ~~sea,~~ river, lake and air borders **as well as sea borders when in accordance with the United Nations convention on the law of the sea (UNCLOS)**;

iii. allow cross-border hot pursuit to continue into their territory without any geographical or temporal limitation, until the arrival of their competent law enforcement authority;

iv. ~~Members States will be systematically and as soon as possible notified of the cross-border pursuit before the border is crossed, except in cases of de facto impossibility[19];~~

v. collect statistics on the cross-border hot pursuits that their competent law enforcement authorities conducted and report those statistics annually to the European Parliament, the Council and the Commission**. This data include on a yearly basis ~~.~~ :**

- **the number of hot-pursuits conducted,**
- **the geographic areas where the hot-pursuits took place and the Member States involved,**
- **the number of personnel and equipment deployed,**
- **the number of pursued persons arrested.**

(b) Member States should allow officers from the competent law enforcement authority of another Member State conducting cross-border hot pursuits into their territory to do the following:

i. carry their service weapons and ammunitions **and other service equipment**;

ii. use their service weapons in legitimate self-defence and, where necessary, in the defence of others **in accordance with the national law of the host country**;

iii. ~~to the extent allowed by their constitutional law,~~ in full compliance with the declarations made by each Member State in accordance with Article 41 § 9 of the Convention implementing the Schengen Agreement**,** stop and provisionally detain a ~~suspect~~**pursued person**, including through means of coercion and physical force, pending the arrival of officers of the competent authorities of the Member State in whose territory the hot pursuit took place.

~~19~~ ~~Article 41 CISA~~

iv. use the road traffic privileges applicable in the Member States where the hot pursuit takes place;

v. **in accordance with the national law of the host country,** use their GPS systems to have those officers' vehicles tracked by the competent law enforcement authority of that other Member State.

vi. operate their secure real-time communication means in internal EU border areas.

2.2. Cross-border surveillance

(a) Member States should:

i. ensure that the types of crimes eligible for cross-border surveillance into their territory cover the criminal offences listed in the Annex to this Recommendation **as well all other criminal offenses which may give rise to extradition**;

ii. allow the conduct of cross-border surveillance into their territory in relation to persons suspected of having committed or participated in one or more of those criminal offences, but also to persons that can lead to the identification or the tracing of such suspects;

iii. allow the conduct of cross-border surveillance into their territory across land, sea, river, lake and air borders~~. Surveillance shall cease as soon as the hosting State in whose territory it is taking place so requests~~;

iv. allow and facilitate the pooling of material, including through short or long-term loans based on jointly agreed procedures, to conduct cross-border surveillances more efficiently;

v. designate ~~their Single Point of Contact as their~~**a** central authority responsible for coordinating inbound and outbound cross-border surveillances, **which is part of, or works in close cooeperation with the Single Point of Contact, and which is is able** ~~including by enabling it~~ to process and provide requests for authorisation 24 hours a day, 7 days a week;

vi. collect statistics on the cross-border surveillances that their competent law enforcement authorities conducted, and report those statistics annually to the European Parliament, the Council and the Commission. **This data include on a yearly basis:**

- **the number of cross-border surveillances conducted,**
- **the areas where the cross-border surveillances took place and the Member States involved,**
- **the number of personnel and equipment deployed.**

(b) Member States should allow officers from the competent law enforcement authority of another Member State conducting cross-border surveillances into their territory to do the following:

i. carry their service weapons and ammunitions **and other service equipment** ;

ii. use their service weapons in legitimate self-defence and, where necessary, in the defence of others in ~~full compliance~~**accordance** with ~~the~~ national ~~provisions~~ **law** of the host country ;

iii. **in accordance with the national law of the host country,** use technical means necessary to conduct the cross-border surveillances, including GPS trackers, drones, audio and video equipment if permited by national provisions.

2.3. Joint operations

(a) Member States should allow officers from the competent law enforcement authority of another Member State involved in joint operations conducted in their territory to do **at least** the following:

i. perform identity checks, and ~~intercept~~ **detain** any person who tries to avoid an identity check;

ii. to wear their uniform and carry their service weapons and ammunitions;

iii. use their service weapons in legitimate self-defence and, where necessary, in the defence of others;

iv. operate their secure real-time communication means in internal EU border areas or provide other possibilities for cross border communication ~~For this purpose, the technical and legal constraints should be removed and a high level of exchange security should be maintained~~.

(b) Member States should:

i. provide ~~provide~~ language trainings and trainings for officers from the competent law enforcement authorities likely to be involved in joint operations on operational procedures, administrative and criminal law, and criminal procedures of other Member States used in internal EU border areas, including on countering trafficking in human beings, migrant smuggling and preventing and detecting illegal staying and cross-border crime linked to irregular migration, or other serious and organised crime activities of cross-border nature;

ii. collect statistics on cross-border joint patrols and operations that their competent law enforcement authorities conducted in the territory of other Member States and report those statistics annually to the European Parliament, the Council and the Commission. **This data include on a yearly basis:**

- **the number of joint operations conducted,**
- **the areas where the joint operations took place and the Member States involved,**
- **the number of personnel and equipment deployed,**
- **the number of identity checks per~~s~~formed and investigations initiated,**
- **the number of susp~~s~~ects arrested.**

iii. use joint operations ~~in internal EU border areas~~ to :

~~3. CROSS-BORDER OPERATIONAL POLICE COOPERATION TO COUNTER MIGRANT SMUGGLING AND CROSS-BORDER CRIME LINKED TO IRREGULAR MIGRATION~~

~~(a) Member States should use joint operations in intra-EU border areas to:~~

~~i.~~ counter **cross border crime, including trafficking in human beings,** migrant smuggling ~~;~~

~~ii. prevent and detect illegally staying migrants~~ and cross-border crime linked to irregular migration**,** and prevent and detect illegaly staying migrants.

~~(b) Member states should ensure coordination at national level between the competent authorities involved in joint operations and those involved in the further handling of third country nationals apprehended for an illegal stay, in particular by using mechanisms as referred to in Article 6(3) of Directive 2008/115/EC.~~

~~4. CROSS-BORDER OPERATIONAL POLICE COOPERATION TO COUNTER TRAFFICKING IN HUMAN BEINGS AND TO IDENTIFY AND PROTECT VICTIMS~~

~~(a) Member states should use cross-border joint operations in intra-EU border areas to:~~

~~i. counter the trafficking in human beings;~~

~~ii.~~ identify and provide safety and support to victims of trafficking in human beings.

5. POLICE AND CUSTOMS COOPERATION CENTRES

(a) Member States**, which have Police and Customs Cooperation Centre (PCCC)** should ensure that **beyond** their existing ~~Police and Customs Cooperation Centres (PCCCs)~~**focus on information exchange, PCCCs** ~~can fulfill their current~~ **are able to carry out the following** tasks ~~by~~:

i. facilitating supporting, and **where relevant,** coordinating joint operations in intra-EU border areas;

ii. producing or contributing to joint analysis of cross-border crimes specific to their intra-EU border area and**, where appropriate,** sharing such analysis through the national Single Point of Contact with relevant national authorities, other Member States and competent Union Agencies and bodies, such as Europol**,** ~~and~~ Frontex and ~~where appropriate,~~ the European Anti-Fraud Office (OLAF);

iii. **where relevant, providing operational** support~~ing~~ investigations into cross-border crimes occurring in their intra-EU border areas.

(b) ~~In addition to PCCCs,~~ Member States should **envisage**~~, strive~~ to establish and strengthen operational cross-border cooperation and adopt best practices with their neighboring States, e.g. **through** Joint Police Stations **which could be established as part of existing PCCCs or separately**.

6. A ~~COMMON~~ SUPPORT PLATFORM FOR JOINT OPERATIONS

(a) Member States, with the support of the Commission and ~~Europol~~ **the relevant Union agencies**~~,~~ should **set up a support platform which would allow to**:

i. identify and centralise without transmission of personal data, the needs expressed by each Member State for organizing joint operations :

~~i. jointly set up a common support platform where Member States can exchange their needs and priority areas for joint operations:~~

– in locations that are of particular importance to prevent and counter crime such as key criminal hubs or touristic areas visited by tourists from other Member States;

– during mass gatherings and major events likely to attract visitors from other Member States such as large sport events or international summits;

– in case of disasters and serious accidents, in coordination with the Union Civil Protection Mechanism (UCPM), and in particular the Emergency Response Coordination Centre (ERCC) ;[20]

– in case of other serious and organised crime activities of cross border nature.

ii. automatically generate statistics and draw up a report on the needs identified and the operations carried out during the previous year.

(b) Member States should :

~~ii. jointly establish, based on information provided by competent Union agencies and Member States, and with the input from their police and customs cooperation centres, a single regular report analysing the risks and needs for joint operations, which Member States could use to target their joint operations.~~

i. provide the common support platform with information on all serious threats to public order and safety of which they are aware, upcoming mass gatherings and large-scale events that are likely to attract significant numbers of visitors from other Member States and the mobility patterns of their citizens, notably during touristic seasons;

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[20] During crises and emergencies (mostly linked to disasters or large accidents), any affected Member State or third country may call for civil protection or humanitarian assistance through the Union Civil Protection Mechanism. The Emergency Response Coordination Centre (ERCC) then coordinates, facilitates and co-finances Member States' response to the request for assistance (Emergency Response Coordination Centre (ERCC) | European Civil Protection and Humanitarian Aid Operations (europa.eu)).

ii. **designate, depending on the nature of the joint operations, the appropriate Point of Contact as a national contact point for the support of such joint operations and the transmission of relevant information.**

7. ENSURING EFFECTIVE ACCESS TO INFORMATION AND COMMUNICATION

(a) Member States should ensure that the officers from their competent law enforcement authority involved in the cross-border operational **law enforcement** cooperation covered by this Recommendation and acting in the territory of another Member State:

i. have remote and secure access to their own national databases and to Union and international databases through the European Search Portal, as permitted under their national law, allowing them to carry out their ~~police~~ **law enforcement** functions in the territory of another Member State as part of those operations, such as carrying out identity checks;

ii. can use secure real-time communication means that are capable of operating in the territory of another Member State, allowing them to communicate directly with the competent law enforcement authority of their Member States and with the officers of competent law enforcement authorities of the other Member State or Member States concerned.

(b) Member States should, where appropriate, make use of the technical solutions to be provided inter alia by the EU Innovation Hub or Europol's innovation lab (and the Core Group on Secure Communication), **as well as the ENLETS messenter and the Broadway project,** to ensure secure real-time direct communication across borders.

(c) Member States should limit the information provided to what is strictly relevant and necessary and grant access to data collected and exchanged only to those officers who ultimately need access to such data in order to perform their duties.

8. JOINT TRAINING AND PROFESSIONAL DEVELOPMENT RELATING TO CROSS-BORDER OPERATIONAL ~~POLICE~~ LAW ENFORCEMENT COOPERATION

(a) Member States should:

i. set up, together with their neighbouring Member States, joint initial trainings and exchange programmes for their ~~police~~ **law enforcement** cadets on cross-border operational ~~police~~ **law enforcement** cooperation;

ii. ~~adjust and~~ seek to ~~align~~ **adjust** the curricula of their national ~~police~~ **training** academies, in all ~~levels of~~**relevant** training **modules**, to include accredited European cross-border operational ~~police~~ **law enforcement** cooperation courses, where appropriate, in close cooperation with CEPOL;

iii. seek to design and implement career paths for ~~police~~ **law enforcement** officers who completed joint initial training, exchange programmes or specific cross-border operational ~~police~~ **law enforcement** cooperation courses;

iv. set up joint continuous professional development courses and initiatives for ~~police~~ **law enforcement** officers to develop skills and knowledge on cross-border operational ~~police~~ **law enforcement** cooperation, in particular on relevant legislation, rules of engagement, tools, techniques, mechanisms, procedures and best practices;

v. ~~step-up language courses for their police officers to enable them to participate effectively in cross-border operational police cooperation;~~ **provide language trainings and trainings for officers from the competent law enforcement authorities likely to be involved in operational cooperation, on operational procedures, administrative and criminal law, criminal procedures of other Member States and the authorities to contact in other Member States;**

vi. seek to align **with due consideration of the needs of the Member States,** their training portfolio to the priorities related to cross-border operational ~~police~~**law enforcement** cooperation set in the EU Strategic Training Needs Assessments (EU-STNA);

vii. inform CEPOL of their needs for training relating to cross-border operational ~~police~~ **law enforcement** cooperation and support relevant CEPOL activities, so that CEPOL could play its role in the training of ~~police~~ **law enforcement** officiers;

viii. reflect on the possibility of creating large-scale and long-term pan-European joint training and exchange programmes for ~~police~~ **law enforcement** cadets and officers in the field of cross-border operational ~~police~~ **law enforcement** cooperation.

9. FINAL PROVISIONS

(a) Member States should discuss and take forward the issues covered by this Recommendation, and in particular issues relating to its implementation.

(b) Member States should make full use of the financial support made available through the Internal Security Fund – Police to improve and intensify cross-border operational cooperation.

(c) Within six months of the date of adoption of this Recommendation, Member States should initiate the process to ~~change~~ **review** their national rules and bi- and multilateral agreements with other Member States where relevant and in accordance with Union law, to give effect to this Recommendation.

(cbis) Within two years of the date of adoption of this Recommendation, Member States should have implemented the necessary measures, including by changing their national rules and bi- and multilateral agreements with other Member States where relevant and in accordance with Union law, to give effect to this Recommendation.

(d) At the latest two years after the date of adoption of this Recommendation, the Commission should assess the effect given to this Recommendation by the Member States and publish a report thereon.

Done at Brussels,

For the Council
The President