Fight against crime: exchange of information and intelligence between law enforcement authorities of the Member States. Framework Decision. Initiative Sweden

2004/0812(CNS) - 18/12/2006 - Final act

PURPOSE: to improve the exchange of information and intelligence between law enforcement authorities of the Member States in order to improve the fight against organised crime and terrorism.

LEGISLATIVE ACT: 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.

BACKGROUND: in order to protect its citizens and provide them with a high level of security, the law enforcement authorities of the Member States must have access to information and intelligence enabling them to detect and prevent criminal activity. It is particularly important for them to have timely access to this information at both national and international level.

Given that the Union authorises closer cooperation between law enforcement authorities of the Member States in order to prevent and detect criminal offences related to terrorism and organised crime, this Framework Decision, proposed on the initiative of Sweden, aims to establish a binding legal framework to formalise existing cooperation in terms of the exchange of information between law enforcement authorities of the Member States. These authorities should thus be able to request and obtain information and intelligence from other Member States at different stages of investigation, from the phase of gathering criminal intelligence to the phase of criminal investigation, and this should be carried out expeditiously. However, this exchange of information shall duly respect the fundamental principles of human rights and the rules on data protection.

CONTENT: the Framework Decision aims to lift restrictions on the exchange of information between national law enforcement authorities and to establish an effective and expeditious mechanism for the exchange of intelligence on all issues related to terrorism and international crime. Member States shall exchange intelligence for the purpose of conducting criminal investigations or criminal intelligence operations.

Basic principles and scope: the horizontal approach that is set out in the Framework Decision involves establishing a framework for cooperation based on mutual recognition of the competences of national law enforcement authorities by not establishing any formal requests or procedures other than those that are strictly necessary for the exchange of data. The plan, therefore, does not impose any obligation on Member States to store information for the sole purpose of providing it to the authorities of other Member States and limits the use of information provided. Therefore, intelligence received may not, in principle, be used as evidence in the framework of a criminal procedure.

Furthermore, this Framework Decision does not impose any obligation to obtain any information or intelligence by means of coercive measures in the Member State receiving the request for information or intelligence. However, Member States shall, in accordance with their national law, provide information or intelligence previously obtained by means of coercive measures.

Relevant authorities: provisions are established in order to clearly define the competent authorities with regards to the exchange of information: the competent authority may be a national police service, customs or another authority that is authorised by national law to detect and prevent offences or criminal activities.

Exchange of information and intelligence: a simplified exchange mechanism: the Framework Decision defines the type of information that may be exchanged, particularly any information or data held by law enforcement authorities or by public authorities or private entities and which is available to the law enforcement authorities without the taking of coercive measures. The Framework Decision also specifies the types of offence for which information may be exchanged. These offences are referred to in Framework Decision 2002/584/JHA on the European arrest warrant (see CNS/2001/0215).

The plan also establishes a mechanism for the exchange of data between Member States: a formal exchange between relevant administrations. Information is sent at the request of a competent law enforcement authority using a form set out in the annex to the Framework Decision, and acting within the framework of a criminal investigation or a criminal intelligence operation. In this context, all efforts must be made to facilitate the exchange of information (in particular, a Member State shall not subject the exchange of information to an agreement or specific legal authorisation, except when duly provided for in the Framework Decision).

Provisions are also established to specify the conditions under which information must be exchanged and, in particular, the technical arrangements for this exchange:

- time limits for the exchange: in principle, a request for information should receive a response within 7 to 14 days maximum. However, urgent requests shall receive a response within 8 hours (3 days if the request requires a manifest additional workload for the authority concerned);
- cases in which information may be exchanged: for the purpose of detection, prevention or investigation of an offence where there are factual reasons to believe that relevant information and intelligence is available in another Member State. These reasons are outlined in the request form;
- communication channels: channels other than those used by national authorities may be used to facilitate the exchange of information, including all channels of international cooperation that exist between law enforcement authorities. The information shall also be communicated to Europol and Eurojust insofar as the exchange refers to an offence or criminal activity within their mandate;
- spontaneous exchange of information: provisions are also established to enable the spontaneous exchange of information between competent authorities, without going through the official procedure.

Data protection: there are provisions to establish the exchange of information within the strict framework of the applicable rules and norms of data protection, including when exchanging data through channels other than official channels (for example, directly between competent authorities). In particular, it is specified that information that has been gathered shall, in principle, only be used for the purpose for which it was communicated or to prevent an immediate and serious danger to public security. The use of information for other means shall require the prior agreement of the Member State that sent the information and must be in accordance with the national law of the receiving Member State. Conditions may also be imposed on the use of communicated information by the authority that sent the information (for example, the obligation to be informed of the results of the investigation). Furthermore, certain information shall not be communicated in specific cases set out in the Framework Decision. In all circumstances, the confidentiality of the communicated information shall be guaranteed and the provisions on the protection of personal data shall apply.

Lastly, there are provisions covering the **refusal to exchange information**: certain intelligence could not be exchanged if a competent authority considers there to be reasons to believe that communicating this intelligence would threaten the vital interests of the requested Member State in terms of national security or would damage an investigation or criminal intelligence operation or even the security of individuals.

Information could also not be exchanged if the requested Member States believes that a demand is disproportionate or irrelevant with regard to the use for which the information was requested. When a request concerns an offence that carries a prison sentence of one or more years under the national law of the requested Member State, the law enforcement authority can refuse to communicate the requested information.

Territorial provisions: Iceland, Norway and Switzerland are affected by this Framework Decision.

Relation to other instruments: Member States may continue to conclude or apply bilateral or multilateral agreements or arrangements in force when this Framework Decision is adopted insofar as such agreements or arrangements allow the objectives of this Framework Decision to be extended and help to simplify or facilitate further the procedures for exchanging information and intelligence falling within the scope of this Framework Decision.

ENTRY INTO FORCE: 30/12/2006.

TRANSPOSITION: Member States must comply with this Framework Decision by 19/12/2006. A report on its implementation is expected by 19/12/2006.