



Procedure file

Basic information		
CNS - Consultation procedure Decision	2004/0812(CNS)	Procedure completed
Fight against crime: exchange of information and intelligence between law enforcement authorities of the Member States. Framework Decision. Initiative Sweden		
Subject 7.30.05 Police cooperation 7.30.30 Action to combat crime 7.40.04 Judicial cooperation in criminal matters		

Key players			
European Parliament	Committee responsible	Rapporteur	Appointed
	LIBE Civil Liberties, Justice and Home Affairs		27/07/2004
		ALDE DUQUESNE Antoine	
Council of the European Union	Council configuration	Meeting	Date
	Environment	2773	18/12/2006
	Justice and Home Affairs (JHA)	2696	01/12/2005
	Justice and Home Affairs (JHA)	2683	12/10/2005
European Commission	Commission DG Justice and Consumers	Commissioner FRATTINI Franco	

Key events			
03/06/2004	Legislative proposal published	10215/2004	Summary
27/10/2004	Committee referral announced in Parliament		
24/05/2005	Vote in committee		Summary
26/05/2005	Committee report tabled for plenary, 1st reading/single reading	A6-0162/2005	
07/06/2005	Results of vote in Parliament		
07/06/2005	Debate in Parliament		
07/06/2005	Decision by Parliament	T6-0216/2005	Summary
12/10/2005	Debate in Council	2683	Summary
01/12/2005	Debate in Council	2696	Summary
18/12/2006	Act adopted by Council after consultation of Parliament		
18/12/2006	End of procedure in Parliament		
29/12/2006	Final act published in Official Journal		

Technical information	
Procedure reference	2004/0812(CNS)
Procedure type	CNS - Consultation procedure
Procedure subtype	Legislation
Legislative instrument	Decision
Legal basis	Treaty on the European Union (after Amsterdam) M 034-p2b; Treaty on the European Union (after Amsterdam) M 030-p1
Stage reached in procedure	Procedure completed
Committee dossier	LIBE/6/28234

Documentation gateway					
Legislative proposal		10215/2004 OJ C 281 18.11.2004, p. 0005-0010	04/06/2004	CSL	Summary
Committee draft report		PE355.598	16/03/2005	EP	
Amendments tabled in committee		PE357.861	10/05/2005	EP	
Committee report tabled for plenary, 1st reading/single reading		A6-0162/2005	26/05/2005	EP	
Text adopted by Parliament, 1st reading/single reading		T6-0216/2005 OJ C 124 25.05.2006, p. 0020-0215 E	07/06/2005	EP	Summary
Commission response to text adopted in plenary		SP(2005)2882	13/07/2005	EC	
Follow-up document		SEC(2011)0593	16/05/2011	EC	Summary

Additional information	
European Commission	EUR-Lex

Final act
Justice and Home Affairs act 2006/960 OJ L 386 29.12.2006, p. 0089 Summary Corrigendum to final act 32006F0960R(01) OJ L 075 15.03.2007, p. 0026 Summary

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

PURPOSE: to simplifying the exchange of information and intelligence regarding serious offences, including terrorist acts.

PROPOSED ACT: Framework Decision.

CONTENT: this Framework Decision is being proposed on the initiative of the Kingdom of Sweden. The stated intention of the Decision is to establish rules under which Member States' law enforcement authorities exchange information and intelligence relating to crime investigations including terrorist acts. The Decision notes that one of the Union's core objectives is to provide its citizens with a high level of security within an area of freedom, security and justice. This core objective is being seriously undermined by the lack of information exchange between the Member States relating to criminal activities, thanks, in large part, to the continued need for formal procedures, administrative structures and legal obstacles laid down in Member States' legislation. This Council initiative seeks to rectify the situation by adopting a legally binding instrument, which simplifies the exchange of information and intelligence. The actual provisions enshrined in the Framework Decision state that:

- National provisions, bilateral or multilateral agreements, or indeed agreements between the Member States, which are more favourable, will not be prejudiced by the measures in the Decision.

- Member States are not obliged to provide information and intelligence, which can be used before a judicial authority as evidence. Where a Member State has obtained information or intelligence in accordance with the Decision, and wants to use it as evidence in a criminal proceeding, it has to obtain the consent of the Member State that provided the intelligence.
- A number of terms are defined and include: competent law enforcement authorities, crime investigation, criminal intelligence operation and information and intelligence.
- Member States must ensure that information and intelligence can be provided to the competent law enforcement authorities in another Member States. In turn, intelligence can be provided on request by a competent law enforcement authority, acting within the limits conferred upon it by national law, conducting a crime investigation or a criminal intelligence operation.
- Information and intelligence should be provided without delay and Member States should ensure that they have procedures in place to be able to respond to a request within 12 hours. A long catalogue of offences are listed as applying to this measure and range from terrorism, trafficking in human beings to environmental crime and computer-related crime.
- The Communication channels to be used may take place via the SIRENE Bureaux, or through the European Police Office established by the Europol Convention. Alternatively Member States may agree, on a case-by-case, basis for other channels in which information can be exchanged ? for example through a liaison officer or directly between national or local law enforcement authorities.
- Provisions relating to the spontaneous exchange of information and intelligence, data protection and confidentiality are included in the Framework Decision.
- Lastly, Member States may refuse to pass on intelligence in cases where the information could harm essential national security interests, jeopardise the success of a current investigation or criminal intelligence operation or in cases where the requested information and intelligence is disproportionate or irrelevant with regard to the purposes for which it has been requested.

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

The committee adopted the report by Antoine DUQUESNE (ALDE, BE) amending the proposed initiative under the consultation procedure:

- Member States should ensure that the information or intelligence provided to the competent law authorities of the other Member States is also provided to Europol and Eurojust if the exchange relates to an offence or criminal activity within the Europol or Eurojust mandate;
- the clause setting a 12-hour deadline for the provision of the information requested was amended so that the deadline could be, "in the case of information which requires formalities or prior contacts with other authorities, 48 hours if the matter is urgent and otherwise 10 working days";
- access to information and intelligence should be "in line with the proportionality principle according to data protection experts within the European Union";
- the state providing the information shall have the right, "on certain grounds relating to human rights or national law", to refuse to provide information. It can also refuse to do so "where justified in terms of respect for the integrity of natural persons or the protection of business secrets";
- Member States should not have the option of using "surplus information" to bring prosecutions for offences completely unrelated to those for which the information was originally requested;
- the committee deleted a number of clauses in Article 9 and introduced four new articles (9a, 9b, 9c and 9d) setting out a series of data protection provisions;
- a new Article 11a specified that each Member State shall accept the jurisdiction of the EC Court of Justice "to give preliminary rulings on the validity and interpretation of this Framework Decision in accordance with Article 35(2) of the TEU".

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

The European Parliament adopted a resolution drafted by Antoine DUQUESNE (ALDE, BE) and made some amendments to the Commission's text. (Please see the summary of 25/05/2005.) In addition, Parliament appended the following to the original proposal:

- if information or intelligence cannot be provided immediately, the competent law enforcement authority having received a request for information or intelligence shall indicate immediately the timeframe within which it can be provided;
- a competent law enforcement authority may also refuse to provide information where it has reason to believe that the state requesting the information might use that information for the prosecution of offences other than that stated in the request. The information received may only be used for the prosecution of the crime for which it is requested.

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

The Mixed Committee discussed the scope of a draft Framework Decision on simplifying the exchange of information and intelligence between

law-enforcement authorities of the Member States. The Council will re-examine this issue at its meeting on December with a view to reaching agreement on the whole text before the end of the year.

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

The Mixed Committee agreed on a general approach on the Framework Decision on simplifying the exchange of information and intelligence between law enforcement authorities, in particular as regards serious offences including terrorism acts. The Framework Decision will ensure that certain information vital for law enforcement authorities is exchanged in a rapid manner within the EU.

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

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.

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

PURPOSE: Corrigendum to 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 (Framework Decision first published in the Official Journal of the European Union L386 of 29 December 2006, p.0089).

This Framework Decision establishes the rules under which Member States' law enforcement authorities may exchange existing information and intelligence effectively and expeditiously for the purpose of conducting criminal investigations or criminal intelligence operations.

The corrigendum clarifies certain points:

- that Member States shall take the necessary measures to comply with the provisions of this Framework Decision before 19 December 2008;
- the Commission shall, before 19 December 2010, submit a report to the Council on the operation of this Framework Decision;
- the Council shall before 19 December 2011 assess the extent to which Member States have complied with the provisions of this Framework Decision;
- Member States shall no later than 19 December 2007, notify the Council and the Commission of the existing agreements and arrangements which they wish to continue applying.

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

The Commission presents a Staff Working document on Council Framework Decision 2006/960/JHA ("Swedish Initiative"). The Framework Decision requires the Commission, before 19 December 2010, to submit a report to the Council on the operation of the Framework Decision. Thereupon, the Council shall assess before 19 December 2011 the extent to which Member States have complied with the provisions of the Framework Decision.

This document sets out how the Framework Decision has operated in practice from December 2008 until December 2010. It does not evaluate the Framework Decision nor assess the extent to which Member States have complied with its provisions as that prerogative has been reserved for the Council by the instrument itself.

The report shows that the Swedish initiative has not yet reached its full potential, but the interoperability coordination programme within the [EU Information Management Strategy](#) will foster the usage of this instrument and increase the importance of this information exchange tool in the future.

In addition, the implementation of [Council Decisions 2008/615/JHA and 2008/616/JHA](#) (Prüm Decisions) could enhance the usage of this instrument and this will be further examined by the Commission in 2012.