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**COMMISSION STAFF WORKING PAPER**

**Operation of the Council Framework Decision 2006/960/JHA of 18 December 2006  
("Swedish Initiative")**

## TABLE OF CONTENTS

1.	Introduction .....	3
1.1.	Aim and scope of the Council Framework Decision 2006/960/JHA of 18 December 2006 .....	3
1.2.	Contents of the Council Framework Decision 2006/960/JHA of 18 December 2006 .....	3
1.3.	About this document.....	4
2.	Operation of the instrument.....	5
2.1.	Transposition .....	5
2.2.	Usage .....	6
2.2.1.	Regularity of usage.....	6
2.2.2.	Channels .....	7
2.2.3.	Responding to urgent requests within at most eight hours as required by Art 4 (1) of the Framework Decision.....	9
2.2.4.	Judicial involvement/Rogatory Letter .....	9
2.2.5.	Usage of forms .....	9
3.	Conclusions .....	11

## **1. INTRODUCTION**

### **1.1. Aim and scope of the Council Framework Decision 2006/960/JHA of 18 December 2006**

The aim of 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 (hereafter the Framework Decision or the Swedish Initiative) is to establish 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.

Sweden presented this legislative initiative on 4 June 2004 following the Council Declaration on Combating Terrorism of 25 March 2004 that called for 'exploration of possibilities of greater intelligence sharing on terrorist matters'. It was adopted by the Council on 18 December 2006.

Since the Framework Decision constitutes a development of the provisions of the Schengen acquis, it is also applicable to Iceland, Norway and Switzerland according to:

- 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<sup>1</sup> and
- the Agreement signed between the European Union, the European Community and the Swiss Confederation concerning the association of the Swiss Confederation with the implementation, application and development of the Schengen acquis<sup>2</sup>.

The Framework Decision replaced Articles 39 (1), (2), (3) and 46 of the Convention Implementing the Schengen Agreement<sup>3</sup> as far as related to exchange of information and intelligence for the purpose of conducting criminal investigations or intelligence operations.

### **1.2. Contents of the Council Framework Decision 2006/960/JHA of 18 December 2006**

The legal instrument is divided into the following titles:

- Title 1 deals with the "Scope and Definitions";
- Title 2 is concerned with "Exchange of Information and Intelligence", particularly tackling:

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<sup>1</sup> OJ L 176, 10.7.1999, p. 31.

<sup>2</sup> OJ L 370, 17.12.2004, p. 78.

<sup>3</sup> OJ L 239, 22.09.2000, p. 19.

- Provision of information and intelligence (Art. 3);
  - Time limits for provision of information and intelligence (Art. 4);
  - Requests for information and intelligence (Art. 5);
  - Communication channels and language (Art. 6);
  - Spontaneous exchange of information and intelligence (Art. 7);
  - Data protection (Art. 8);
  - Confidentiality (Art. 9);
  - Reasons to withhold data (Art. 10).
- Title 3 containing "Final Provisions".
    - Relation to other instruments (Art. 12).

The JHA Council endorsed on 27-28 November 2008 guidelines on the implementation of the Framework Decision which were updated by 17 December 2010<sup>4</sup>.

- Annexed to the legal instrument are two forms (A and B):
  - Form B shall be used when requesting information and intelligence under Framework Decision 2006/960/JHA.
  - Form A shall be used by the requested Member States to transmit information and/or intelligence requested via form B, to inform the requesting authority of the impossibility of meeting the normal deadline, of the necessity of submitting the request to the judicial authority for an authorisation, or of the refusal to transmit the information.

### **1.3. About this document**

Article 11 of the Framework Decision requires the Member States to take the necessary measures to comply with its provisions before 19 December 2008 and to transmit to the General Secretariat of the Council and to the Commission the text of the provisions transposing into their national laws the obligations imposed. On the basis of this and other information provided by the Member States on request, the Commission shall, before 19 December 2010, 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.

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<sup>4</sup> *Document 9512/1/10 REV1 DAPIX 59 CRIMORG 90 ENFOPOL 125 ENFOCUSTOM 36 COMIX 346.*

This document sets out how the Framework Decision has operated in practice from December 2008 until December 2010. It does not purport to 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.

This document draws on information from the following sources:

- Meetings of specialists of EU Member States, Europol and Eurojust held in Brussels on 5/6 November 2007, 16/17 January 2008 and 3/4 June 2008;
- Meeting of Member States' specialists on the review of needs and instruments for the exchange of law enforcement relevant information held in Brussels on 16-17 July 2008;
- Meetings of representatives from EU Member States, Europol and Eurojust on the evaluation of cross-border information exchange and on simplifying the exchange of information and intelligence between law enforcement authorities of the Member States of the European Union held in Brussels on 27 April 2009, 19 June 2009 and 15 October 2010 co-organised with the Belgian Presidency;
- Second meeting of the Sub-Group on Police Cooperation Statistics held in Brussels on 10 February 2010;
- Discussions in the Ad hoc Working group on Information Exchange (DAPIX) within the Council in 2009 and 2010.

## **2. OPERATION OF THE INSTRUMENT**

### **2.1. Transposition**

By 31 December 2010, **almost two-thirds of the Member States have informed that they have transposed** the Framework Decision into their domestic legislation.

Those who have done so are: BG, CZ, DK, CY, ES, HU, LT, LV, NL, PT, FI, SE, SI, and SK.

The UK and IE have informed that they had no need to transpose this instrument as their domestic legislation is already in line with the Framework Decision.

The following Member States have informed that they have not transposed the Framework Decision yet: AT, BE, DE, EE, EL, FR, IT, LU, PL.

The main reasons given by Member States for not having transposed the Framework Decision are lengthy parliamentary procedures.

The Swedish Initiative also required Member States to notify to the Commission by 19 December 2007 their bilateral/multilateral cooperation agreements. It also required them to notify to the Commission their National Contact Points (NCP) and competent authorities

within the meaning of Article 2 (a) of the Framework Decision by 18 December 2007, as well as the text of their national implementing legislation by 31 December 2010:

- **All EU Member States** as well as **Norway, Iceland** and **Switzerland** have notified their bilateral/multilateral agreements;
- **All EU Member States** as well as **Norway, Iceland** and **Switzerland** have notified their NCPs and/or competent authorities;
- **10 Member States** (BG, DK, IE, ES, CY, LV, PT, SI, SK, and FI) have notified to the Commission the text of their national legislation.

## 2.2. Usage

### 2.2.1. Regularity of usage

**Two Member States** – Slovenia and Sweden – have informed the Commission that they **use the Framework Decision frequently**. All other Member States state that they do not draw on it on a regular basis.

The below overview demonstrates the number<sup>5</sup> of Swedish Initiative requests sent via Europol's Secure Information Exchange Network Application (SIENA), which represents only the figures on the information exchanges via this tool:

Member States	2009	2010	2011	All
AT		1		1
BE	1	3		4
BG		6	3	9
CY	1	1		2
DE	12	13	1	26
DK		1		1
ES	3	2		5
FR	24	9		33

<sup>5</sup>

*Notes:*

- 1 request sent to more than one recipient is considered as 1 request.
- 2009 figures start from July 2009.
- 2011 figures up to 19 January 2011.
- Only requests sent are counted, not requests received nor answers.

HU		3		3
IE	1	1		2
LT	1	1		2
LU		1		1
LV	1			1
NL		2		2
NO	1			1
SE	2	1		3
SI	1	1		2
SK	3			3
UK	5	5		10
Total	56	51	4	111

### 2.2.2. Channels

The choice of channels used when exchanging information according to the Framework Decision is left to Member States, according to Article 6 (1) they may select any of the existing communication channels used for international law enforcement co-operation.

According to the *Manual of Good Practices concerning the International Police Co-operation Units at national level*<sup>6</sup>, the following criteria should be observed when selecting the most appropriate communication channel:

- geographical approach:
  - nationality/residence/origin of person or object concerned is known and request concerns establishing details (address, phone number, fingerprints, DNA, registration, ...);
  - nationality/residence/origin of person or object concerned is not known.
- thematic approach:

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<sup>6</sup> Document 7968/08 ENFOPOL 63 + COR 1.

- EUROPOL (organised crime, terrorism and other forms of serious crime, at least 2 Member States, connection to Analysis Work Files (AWF), need for joint approach);
- confidentiality / sensitivity;
- channel used for previous related request.
- technical approach:
  - IT-criteria: need of secure channels (Bureau de Liaison (BDL) network: European Union's official communication system connecting officials of the Member States for intelligence and terrorism-related information);
  - information or technical compatibility (SIRene Picture Transfer (SIRPIT) in order to be able to exchange pictures and fingerprints quickly and electronically between Sirene bureaux).
- urgency
  - urgency / proven speed of channel (in particular immediate risk for person's physical integrity, immediate loss of evidence, request for urgent cross-border operation or surveillances);
  - priority.

Member States informed the Commission that the decision of Member States in this regard usually depends on the subject matter, the country to which the request for information is addressed, the level of security/confidentiality and the urgency of the request.

Requested Member States usually respond by using the same communication channel as was used for the incoming request. In cases where a requested Member State replies by using another communication channel, the requested Member State *generally* informs the requesting Member State about the communication channel(s) that is going to be used.

The most-used communication channels for the purpose of information exchange on the basis of the Framework Decision are:

- SIRENE channel (via the contact points of each Schengen State for the Schengen Information System (SIS));
- EUROPOL channel (via the Europol National Units/Europol Liaison Officers);
- INTERPOL channel (via the INTERPOL National Central Bureaux placed at the National Police Headquarters);



- liaison officer's channels (via Liaison Officers stationed abroad);
- mutual assistance channels among customs authorities (Council Act 98/C 24/01 of 18 December 1997 drawing up, on the basis of Article K3 of the Treaty on European Union, the Convention on mutual assistance and cooperation between customs administrations (Naples II)<sup>7</sup>);
- bilateral channels (information exchange based on cooperation agreements at national, regional and local level).

### 2.2.3. *Responding to urgent requests within at most eight hours as required by Art 4 (1) of the Framework Decision*

All Member States have informed that they have legislative-based or practical procedures in place so that they can respond within at most eight hours to urgent requests for information and intelligence, in accordance with Article 4(1) of the Framework Decision.

Feedback from Member States shows that, under the Framework Decision, requests for urgent data transmission by Member States are not very frequent. Only 11 % of Member States have requested urgent data transmission while 57% have scarcely done so and 32% have never done so.

However, Member States do take urgent requests seriously. 26% of Member States report that such requests have always been complied with while 62% of Member States report that they have often been complied with. On the negative side, 9% of Member States see no compliance at all while 3% see compliance as a rare occurrence.

### 2.2.4. *Judicial involvement/Rogatory Letter*

Efficient and swift information exchange between law enforcement agencies is slowed down by the requirements of different national legal systems and different interpretations thereof, *inter alia* in relation to the need for a judicial involvement or a Rogatory Letter.

Where the information or intelligence sought may, under the national law of the requested Member State, be accessed by the requested competent law enforcement authority only pursuant to an agreement or authorisation of a judicial authority, the requested competent law enforcement authority shall be obliged to ask the competent judicial authority for an agreement or authorisation to access and exchange the information sought (Article 3(4) of the Framework Decision).

### 2.2.5. *Usage of forms*

Annexed to the Framework Decision are forms to be used for requesting information. Annex II to the Guidelines on the implementation of Council Framework Decision 2006/960/JHA of

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<sup>7</sup> OJ C 24, 23.01.1998, p.1.

18 December 2006<sup>8</sup> set out the preferred method for such requests (the simplified form). In case it is not feasible to use this simplified form, a different form or an unstructured free-text format may be used. In order to comply with the requirements of Article 5 of the Framework Decision and in order to be valid under the Framework Decision, a request shall in all cases contain the following:<sup>9</sup>

- administrative information, i.e. requesting Member State, requesting authority, date, reference number(s), requested Member State(s),
- whether urgency is requested, and, if so, what the reasons are,
- description of the requested information or intelligence,
- identity(ies) (as far as known) of person(s) or object(s) who are the main subject(s) of the criminal investigation or criminal intelligence operation underlying the request for information or intelligence (e.g. description of the offence(s), circumstances in which the offence(s) was (were) committed etc.),
- purpose for which the information and intelligence is sought,
- connection between the purpose and the person who is the subject of the information and intelligence,
- reasons for believing that the information or intelligence is in the requested Member State,
- any restrictions on the use of information contained in the request ("handling codes").

According to information provided to the Commission, only five Member States use the form annexed to the Framework Decision in order to request information. The users consider the forms to be rather complex and cumbersome; instead of filling in forms, users prefer an unstructured free-text format.

Furthermore, the forms are often used only by some agencies within a Member State (e.g. by the UK SOCA's Asset Recovery Office in relation to complex financial transactions).

Where SIENA is in use, the system provides for specific electronic forms for the exchange of information in accordance with the Framework Decision. These forms contain all mandatory fields. Alternatively, any other completed form can be added to the message as an attachment; either as an electronic or as a scanned copy.<sup>10</sup>

The development of the Universal Message Format (UMF II), which should allow for sending the relevant information in a standardised e-form, is backed by all Member States and should

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<sup>8</sup> Document 9512/1/10 REV1 DAPIX 59 CRIMORG 90 ENFOPOL 125 ENFOCUSTOM 36 COMIX 346.

<sup>9</sup> Document 9512/1/10 REV1 DAPIX 59 CRIMORG 90 ENFOPOL 125 ENFOCUSTOM 36 COMIX 346.

<sup>10</sup> Document 9512/1/10 REV1 DAPIX 59 CRIMORG 90 ENFOPOL 125 ENFOCUSTOM 36 COMIX 346.

ensure a more harmonised usage of forms. As an interoperability coordination programme, it aims at establishing a common framework for structured information exchange and to make different data systems interoperable.

### 3. CONCLUSIONS

Police cooperation and information exchange between law enforcement authorities of the Member States of the European Union has always been based on mutual trust. There have always been practical procedures for the exchange of information in place. The Swedish Initiative has provided a new broad legal basis for information exchange between law enforcement authorities of the Member States of the European Union, in particular for those who cannot use the provisions of the Schengen acquis, and simplifies the exchange of information and intelligence between law enforcement authorities across the European Union. This document has shown that the forms annexed to the Council Framework Decision 2006/960/JHA of 18 December 2006 are not generally used. However, the legislative-based or practical procedures in place to respond to urgent requests for information and intelligence and the current handling of such requests, the identification of clear and common sets of data categories and the strict time limits demonstrate that the underlying principles of the Framework Decision have been implemented.

The Swedish initiative has not reached its full potential yet, but the interoperability coordination programme within the EU Information Management Strategy<sup>11</sup> will foster the usage of this instrument and increase the importance of this information exchange tool in the future.

In addition, also the implementation of Council Decisions 2008/615/JHA and 2008/616/JHA (Prüm Decisions) could enhance the usage of this instrument, as Council Framework Decision 2006/960/JHA provides a solid and broad basis for the necessary follow-up information exchange for hits related to DNA, fingerprint and Vehicle Registration data.

This option will be further examined within the Communication from the Commission on the European Information Exchange Model as foreseen by the Stockholm Programme<sup>12</sup> in 2012.

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<sup>11</sup> Council Conclusions on an Information Management Strategy for EU internal security, Justice and Home Affairs Council, 30.11.2009 (EU Information Management Strategy).

<sup>12</sup> OJ C 115, 4.5.2010, p.1.