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PROPOSAL

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To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
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Proposal for a

COUNCIL RECOMMENDATION

on operational police cooperation

{SWD(2021) 375 final}

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal[1]

Article 3(2) of the Treaty of the European Union ('TEU') provides that the EU must offer its citizens an area of freedom, security and justice without internal frontiers, in which the free movement of persons is ensured, together with appropriate measures for external border controls, asylum, immigration and preventing and combating of crime.

The area of freedom, security and justice without internal frontiers can be ensured, inter alia, through robust police and judicial cooperation across Member States.[2] Police officers in one Member State, therefore, should cooperate effectively and systematically across the EU. However, police cooperation between Member States still varies greatly. Without a sufficient level of cooperation between the police forces in the Member States, criminals will continue to operate across Member States unabated, taking advantage of the different national jurisdictions, and unauthorised movements of irregular migrants will continue to pose a challenge.

The recent tragic events in the Channel highlighted once more the need for a strong police cooperation, which is reflected in the decision by France, Belgium, the Netherlands and Germany on 28 November 2021 to reinforce operational police cooperation to counter migrant smuggling.

Cross-border crime and the security threats connected with it have, by definition, an international context. As set out in the EU Security Union strategy[3], the EU faces evolving and increasingly complex security threats. These threats spread across borders, and manifest themselves in criminals and organised crime groups that engage in a wide range of criminal activities. As highlighted in the 2021-2025 EU strategy to tackle organised crime[4], organised crime is a significant threat to Europeans, businesses, and national institutions, as well as to the economy as a whole. By operating across different jurisdictions, criminal groups avoid detection and exploit the differences in national laws. Along with the accompanying proposal on a Directive on information exchange, this proposal seeks to establish a Police Cooperation Code with the objective of streamlining, enhancing, developing, modernising and facilitating law enforcement cooperation between relevant national agencies, thus supporting Member States in their fight against serious and organised crime and terrorism.

According to the EU Serious and Organised Crime Threat Assessment 2021 (EU SOCTA), the organised crime landscape is characterised by a networked environment where cooperation between criminals is fluid, systematic and driven by profit. Almost 70% of criminal networks are active in more than three Member States. Around 65% of the criminal

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1 For this Recommendation, '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 to prevent, detect and investigate criminal offences. Unless specified otherwise, 'cross-border' 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.

2 COM(2021) 170 final, 14.4.2021.

3 COM(2020) 605 final, 24.7.2020.

4 COM(2021) 170 final, 14.4.2021.

networks active in the EU are composed of members of multiple nationalities. Over 80% of the reported criminal networks are involved in major types of cross-border crimes, covering trade in drugs, property crime, trafficking in human beings and migrant smuggling.[5] The 2021 EU SOCTA and EMCDDA European Drug report[6] identifies areas where serious and organised crime appears to be on the rise. Key locations such as border regions, airports, motorways, or ferry connections in the EU attract criminals, including because of their geographic position. In border regions, criminals take advantage of the natural delineations of individual law enforcement jurisdictions, which create options to evade law enforcement and provide proximity to multiple markets.[7] The mobility of criminals within the EU creates challenges in preventing and fighting criminal threats[8], and in ensuring public safety.

At the same time, as set out in the December 2020 Counter-terrorism agenda[9], the EU remains on high terrorist alert. Criminals and terrorists use information and communications technology to communicate among themselves and to prepare and conduct their criminal activities.[10]

The area without controls at internal borders ('the Schengen area'[11]) is the largest free travel area in the world. It allows more than 420 million people to move freely and goods and services to flow unhindered. Intra-EU border areas cover approximately 40% of the EU's territory and they were home in 2017 to 30% of the population, some 150 million people. In 2017, almost 2 million people commuted across borders, including 1.3 million cross-border workers[12]. In 2018, EU residents made 1.1 billion trips, either for professional or personal reasons – an increase of 11% since 2014. The COVID-19 pandemic has reduced intra-EU mobility because of quarantine measures, travel restrictions, limitations to public life and lockdowns[13]. However, flows of people will likely continue to be significant in the future, especially as life returns to normal. The Schengen area is a symbol of the EU's interconnectedness and of the ties between Europeans.[14] It also contributes to the efficient functioning of the single market, and therefore to the growth of the EU's economy.[15]

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5 Europol (2021), European Union serious and organised crime threat assessment, a corrupting influence: the infiltration and undermining of Europe's economy and society by organised crime, Publications Office of the European Union, Luxembourg.

6 European Monitoring Centre for Drugs and Drug Addiction (2021), European Drug Report 2021: Trends and Developments, Publications Office of the European Union, Luxembourg.

7 Europol (2021), EU SOCTA 2021.

8 International mobility is a defining characteristic of criminal networks. For instance, organised property crime carried out in the EU is perpetrated primarily by MOCGS (Mobile Organised Crime Groups) and mobility remains their main characteristic to avoid detection and minimise the risk of apprehension. Europol (2021), EU SOCTA 2021.

9 COM(2020) 795 final, 9.12.2020.

10 Commission Staff Working Document, Impact Assessment accompanying Regulation of The European Parliament and of the Council amending Regulation (EU) 2016/794, as regards Europol's cooperation with private parties, the processing of personal data by Europol in support of criminal investigations, and Europol's role on research and innovation. (SWD(2020) 543 final, 9.12.2020).

11 The Schengen Area consists of 26 European countries: Austria, Belgium, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, the Netherlands, Norway, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden, and Switzerland.

12 European Commission (2017), Boosting Growth and cohesion in EU border regions. link.

13 Pandemic profiteering. How_criminals_exploit_the_COVID-19_crisis, Europol, March 2020.

14 Special Eurobarometer 474: The Schengen Area, https://data.europa.eu/euodp/nl/data/dataset/S2218_89_3_474_ENG

15 Communication from the Commission to the European Parliament and the Council 'A strategy towards a fully functioning and resilient Schengen area,' COM/2021/277 final.

In recent years, the Schengen area has been repeatedly put to the test by a series of crises and challenges. Several Member States have reintroduced internal border controls, notably because of the unauthorised movements[16] of irregular migrants, which they consider to pose a serious threat to public policy or internal security. Unauthorised movements within the Schengen area, which are not related to a major migratory crisis or structural deficiencies in the management of the external borders[17], should be addressed by means other than internal border controls, which can be used only as a last resort measure, to address the concrete threats to internal security or public policy. These persisting internal border controls have revealed that there is room for improvement as regards the use of police checks and cooperation, procedures allowing for simplified readmission between the Member States and the application of bilateral agreements and arrangements in that context, in line with Article 6(3) of Directive 2008/115/EC.[18] It is noted that, in line with recital 8 of the Commission Recommendation (EU) 2017/432[19], an effective Union return policy requires efficient and proportionate measures for the apprehension and identification of irregular migrants. These measures, if combined, have the potential to yield the same results in controlling unauthorised movements as temporary internal border controls, and are less intrusive when it comes to the free movement of persons, goods and services.

Police cooperation tools as a development of the Schengen acquis

The recommendations on operational police cooperation as set out in this Recommendation contribute to the development of the Schengen rules.

First, one of the pillars of the EU legal framework underpinning police cooperation was designed 30 years ago through the Convention Implementing the Schengen Agreement (CISA)[20], well before the above-mentioned crises and challenges that have transformed the realities of the Schengen area. The CISA sets out a number of obligations for contracting parties on police cooperation, to counteract any security deficit caused by the abolition of checks at the internal borders. Notably, the CISA sets a number of baseline rules on the conduct of cross-border hot pursuits and cross-border surveillance operations.

Second, joint patrols and other operations are directly linked to the development of the Schengen acquis, including Article 39(1) of the CISA on assistance between authorities, which enables the policies covered by Schengen. Joint patrols and joint operations are addressed by cross-border cooperation agreements between Member States. The Prüm Decisions[21] of 2008 set out a number of baseline rules on how to conduct joint patrols and

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16 Other most frequent reasons notified by the Member States included the migratory crisis of 2015/2016, persistent terrorist threat and the COVID-19 pandemic.

17 Under Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code) (OJ L 77, 23.3.2016, p. 1), the temporary reintroduction of border controls can only be put in place for a limited period, in exceptional circumstances (such as the migratory crisis of 2015/2016), and as a last resort measure.

18 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).

19 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.

20 Official Journal L 239, 22/09/2000 P. 0019 – 0062.

21 Council Decision 2008/615/JHA on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime, and Council Decision 2008/616/JHA on the implementation of Decision 2008/615/JHA (Prüm Council Decision). Article 17 of Council Decision 2008/615/JHA addresses joint operations, and Article 18 addresses assistance in connection with mass gatherings, disasters and serious accidents.

other joint operations across EU internal borders, as well as cross-border assistance in case of disaster and serious accidents. While the centre of gravity of the Prüm Decisions was the automated exchange of DNA, fingerprint and vehicle registration data, and the sections on joint patrols and operations were consequently not labelled as a development of Schengen, it is likely that they would constitute a development of the Schengen acquis, had they been adopted separately, given their cross-border nature.

Third, operational police cooperation between Member States is also taking place under national law, taking account of non-binding Council documents, including good practice ('Schengen Catalogue'[22]) and guidelines ('Single Points of Contact' (SPOC)) Guidelines, Police and Customs Cooperation Centres (PCCC) Guidelines, Manuals on law enforcement information exchange and cross-border operations). SPOCs[23] and PCCCs[24] have been created as a direct consequence of the need to exchange relevant information following the removal of internal borders. Schengen associated countries[25] have also set up PCCCs and have established national SPOCs.

Fourth, Member States have systematically complemented and extended this Schengen 'baseline' legal framework with bi- and multilateral cooperation agreements between themselves. The Commission has identified at least 60 of them across the EU, all different from one another. Schengen associated countries have also concluded such operational cooperation agreements with Member States.

Issues identified

First, the current EU legal framework provides a number of options that Member States can choose from when cooperating with other Member States (e.g. the CISA allows Member States either to set or not to set kilometre distance limitations when hot pursuits take place on their territory[26]). This creates uncertainty and lack of clarity as to which rules police officers have to follow when intervening in another Member State. Moreover, some of the choices made in this regard lead to obstacles, which would not have existed if other choices were made as permitted by the EU legal framework.

Second, the bi- and multilateral police cooperation agreements between Member States, while allowing regional specificities when cooperating with neighbouring Member States, are very time-consuming for Member States to negotiate, sign and ratify. The proliferation of these bilateral agreements has created a complex web of several different arrangements, containing different applicable rules, which have led to fragmentation and obstacles to cooperation. For

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22 Schengen Catalogue. Recommendations and best practices. Police cooperation, 15785/3/10 REV 3, Brussels 15.11.2011.

23 The Single Point of Contact (SPOC) means the national central body responsible for international police cooperation referred to in Article 39(3) of the CISA. Pursuant to 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, Member States would become legally bound to designate a SPOC, which is to be attributed certain minimum tasks relating to information exchange. Once Member States have done so, the reference to the SPOC in this Recommendation should be understood as referring to the SPOC as designated under that Directive.

24 Police and Customs Cooperation Centres bring together, in a single physical location, different law enforcement authorities of the participating Member States and are closely linked to the national central authority dealing with international cooperation – Single Point of Contact (SPOC).

25 Iceland, Norway, Switzerland and Lichtenstein are associate members of the Schengen Area.

26 Article 41(3) of the CISA provides that: *'Hot pursuit shall be carried out in accordance with paragraphs 1 and 2 and in one of the following ways as defined by the declaration provided for in paragraph 9: (a) in an area or during a period as from the crossing of the border, to be established in the declaration; (b) without limit in space or time'*.

instance, in smaller or landlocked countries, law enforcement officers working across borders have to carry out operational actions following, in some cases, up to seven different sets of rules.[27] As a result, some operations such as hot pursuits of suspects over internal borders are not allowed or take place in an uncoordinated sub-optimal way, which criminals use to their advantage. Operational cooperation making use of new technologies such as drones is also insufficiently covered by the current rules.

Third, the Schengen evaluations[28] in police cooperation conducted over the past six years confirmed that some of the bi- or multilateral agreements between Member States are outdated or underused. Others go much further than the rules on cross-border cooperation, allowing the establishment of what could be considered good practice to more effectively fight cross-border crimes (e.g. joint police stations with cross-border criminal investigative powers, or joint trainings) but these are not systematically replicated across the EU.

Fourth, because of the incompatibility of secured communication equipment used between different Member States, the communication equipment of some police officers engaged for instance in hot pursuits, stops functioning when they cross the border. This makes it impossible to liaise with their own authorities, or the authorities of the Member State in which they enter. Furthermore, officers deployed in joint patrols or operations in other Member States are often not provided with mobile equipment that allows them to access remotely and securely their own national, EU and international databases.

Fifth, joint patrols and other joint operations often take place in intra-EU border areas and in other areas within the EU on an ad hoc basis. They often lack coordination and take place without prior risk analysis that would allow for their better targeted deployment. No forum for Member States to exchange such risk analysis or inform other Member States of their needs and priority areas exists. For example, in order to better target joint patrols or other joint operations taking place across the EU during large events (e.g. large sports events, international summits), at specific times (e.g. holiday seasons), or in the face of specific crimes waves (e.g. terrorism, drug trafficking, match-fixing, trafficking in counterfeit goods, credit card fraud, pickpocketing and other property crimes).

Sixth, criminal networks active in migrant smuggling and trafficking in human beings facilitate the unauthorised movements of irregular migrants and exploit the vulnerable situation of victims, treating people as commodities. Organised migrant smuggling is a key criminal activity and facilitated unauthorised movements are a major concern for the EU's security. Trafficking in human beings constitutes another core activity of serious and organised crime, set to remain a threat for the foreseeable future.[29] Nearly half of the victims of trafficking within the EU are EU nationals, and most traffickers are EU citizens.[30] Such crimes have a high cross-border nature and their detection and investigation requires targeted police action on the ground in intra-EU border areas. Notably, coordinated joint patrols and

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27 For instance neighbouring country 1 allowing cross-border hot pursuits but only within 5 km after the border and with no possibility to stop or apprehend the suspect, neighbouring country 2 allowing hot pursuits within 10 km of the border but without the right to carry different (possibly heavier) classes of service weapons; neighbouring country 3 allowing hot pursuits for only 1 hour, etc. Faced with the complexity of such a wide range of different restrictions, even though hot pursuits are in principle permitted, some Member States instruct their police officers to always abandon a hot pursuit when the suspect crosses the border to any of these Member States. Criminals know this and use this to escape almost systematically the police.

28 Council Regulation (EU) No 1053/2013 of 7 October 2013 establishing an evaluation and monitoring mechanism to verify the application of the Schengen acquis (…).

29 Europol (2021), EU SOCTA 2021.

30 Data Collection on Trafficking in Human beings in the EU (2020); COM(2020) 661 final, 20.10.2020

other joint operations, based on risk analysis, where officers from Member States operating together (e.g. in a patrol car) should focus where appropriate on detecting migrant smuggling and trafficking in human beings.

Seventh, officials involved in cross-border law enforcement cooperation in the EU are not always properly trained to have the necessary knowledge and operational skills to fulfil the tasks at hand in the most effective and efficient manner. The 2021 study carried out for the Commission identified a limited availability of training for law enforcement staff involved in cross-border cooperation. Training is not conducted on a regular basis and does not always take into account the latest developments. There is also a limited awareness and knowledge of relevant databases and about the executive powers conferred by different Member States. Language barriers also hamper effective cross-border operational police cooperation.

The way forward

As set out in the Commission's Communication of June 2021 '*A strategy towards a fully functioning and resilient Schengen area*[31],' this Recommendation aims to contribute to the creation of common standards to allow police officers to cooperate effectively with their colleagues in other Member States. Respecting existing EU legislation, and building on good practice in bilateral or multilateral cooperation agreements between Member States, police officers should carry out targeted joint operations, including joint patrols[32], in particular in intra-EU border areas. As terrorists and other criminals operate across Member States, police authorities should be able to better monitor them, and when engaging in hot pursuits across national territories, be able to detain them as necessary, or conduct surveillance operations in respect of them. Furthermore, joint operations can help in addressing effectively the issue of unauthorised movements of irregular migrants.

Respecting the role of Member States in internal security and the need for flexibility to cooperate regionally, this Recommendation sets out actions in operational police cooperation that aim to:

– Clarify and align the rules of engagement in cross-border law enforcement operations to monitor and arrest criminals and terrorists in surveillance, hot pursuit, joint patrols and other joint operations across national territories.

– Enable remote access by police officers to their own databases when operating in other Member States, and the use of secure communications that can continue to function in a cross-border context.

– Broaden the role of existing Police Customs Cooperation Centres to become joint police stations capable of not only exchanging information, but of planning, supporting and coordinating joint patrols and other joint operations based on shared risk analysis.

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31 COM(2021) 277 final, 2.6.2021.

32 According to Article 17 of the Prüm Council Decision, *"In order to step up police cooperation, the competent authorities designated by the Member States may, in maintaining public order and security and preventing criminal offences, introduce joint patrols and other joint operations in which designated officers or other officials (officers) from other Member States participate in operations within a Member State's territory."*

– Use targeted joint patrols and other joint operations in specific intra-EU border areas, based on prior analysis, to counter migrant smuggling as well as to prevent and detect illegally staying migrants and cross-border crime linked to irregular migration.

– Use targeted joint patrols and other joint operations in specific intra-EU border areas, based on prior analysis, to counter trafficking in human beings and to identify and protect victims.

– Create a coordination platform, together with the Commission and Europol[33], to support and target joint operations and patrols across the EU to maintain and improve public order and safety, prevent criminal offences or help address specific crime waves in key locations or during specific times (e.g. tourist areas, key criminal hubs, holiday season), during mass gatherings (e.g. large sport events, international summits), or in case of disasters and serious accidents.

– Broaden joint training and exchange programmes for police cadets and lifelong training of officers involved in operational cross-border cooperation, and reflecting on the creation of a large-scale pan-European joint training programme on operational cross-border cooperation to create a true EU culture of policing.

As set out in the proposed Recommendation, Member States should change their national rules and bi- and multilateral agreements with other Member States, where appropriate, in order to implement the measures contained therein.

• **Consistency with existing policy provisions in the policy area**

This Recommendation is consistent with existing and upcoming policy provisions in law enforcement cooperation.

As highlighted under the 'reasons for and objectives of the proposal' section, existing Commission strategic documents underpin the Commission's efforts to improve the efficiency and effectiveness of law enforcement cooperation in the EU. These include the Security Union strategy[34], the Counter-terrorism agenda for the EU[35], the EU 2021-2025 strategy to tackle organised crime[36], the EU 2021-2025 strategy on combating trafficking in human beings[37], the EU strategy for a more effective fight against child sexual abuse[38], the EU 2021-2025 drugs strategy[39], and the new Schengen strategy.[40]

The Council takes a comparable stance, notably most recently in the Council Conclusions of November 2020 on Internal Security and European Police Partnership, which ask the

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33 The European Union Agency for Law Enforcement Cooperation, as established by the Regulation (EU) 2016/794 of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Law Enforcement Cooperation (Europol) and replacing and repealing Council Decisions 2009/371/JHA, 2009/934/JHA, 2009/935/JHA, 2009/936/JHA and 2009/968/JHA. OJ L 135, 24.5.2016, p. 53–114.

34 COM(2020) 605 final, 24.7.2020.

35 COM(2020) 795 final, 9.12.2020.

36 COM(2021) 170 final, 14.4.2021.

37 COM(2021) 171 final, 14.4.2021.

38 COM(2020) 607 final, 24.7.2020.

39 Council Conclusions on EU 2021-2025 drugs strategy, 14178/20, 18 December 2020.

40 COM(2021) 277 final, 2.6.2021.

Commission "*to consider consolidating the EU legal framework to further strengthen cross-border law enforcement cooperation*[41]. "

This Recommendation will also contribute to a fully functioning and resilient Schengen area as set out in the Schengen strategy, which reiterates "*the need for common standards to allow police officers to cooperate effectively with their colleagues in neighbouring countries.*" It will help to ensure a high level of security within the territory of Member States and therefore support a Schengen area without controls at internal borders. It will also complement the proposal to amend the Schengen Borders Code.

As the two legs of law enforcement cooperation essentially relate to (i) operational cross-border cooperation (which is the focus of this proposal), and (ii) information exchange, this Recommendation will form part of a coherent package together with the proposal for a Directive on information exchange and communication between law enforcement authorities of Member States, and the proposal to revise the Automated Data Exchange Mechanism for Police Cooperation ('Prüm II Regulation').

- **Consistency with other Union policies**

This Recommendation aims to contribute positively to a fully functioning and resilient Schengen area, allowing more than 420 million people to move freely, and goods and services to flow unhindered. This will in turn contribute to the efficient functioning of the single market, and therefore to the growth of the EU's economy. This Recommendation is therefore fully consistent with other EU policies in employment, transport, and ultimately economic growth in intra-EU border areas, but also across the whole of the EU.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

The legal basis for EU action in law enforcement cooperation is Title V, Chapter 5 of the Treaty on the Functioning of the European Union ('TFEU').

Under Article 87 of the TFEU, "*the Union shall establish police cooperation involving all the Member States' competent authorities, including police, customs and other specialised law enforcement services in relation to the prevention, detection and investigation of criminal offences.*"

More specifically, Article 87(3) of the TFEU relates to measures concerning operational cooperation between law enforcement authorities. Such measures are provided for in this Recommendation. It also contains measures covered by Article 89 of the TFEU relating to conditions and limitations under which Member States' law enforcement authorities may operate on the territory of another Member State. To the extent that the Recommendation also contains measures potentially covered by Article 87(2) of the TFEU (e.g. on information exchange and training), those measures are in this case ancillary to the measures based on Article 87(3) and 89 of the TFEU.

This Recommendation is therefore based on Articles 87(3) and 89 of the TFEU, read in conjunction with Article 292 of the TFEU, which states "*The Council shall adopt recommendations […] on a proposal from the Commission in all cases where the Treaties*

[41] Council Conclusions on Internal Security and European Police Partnership, 13083/1/20, 24 November 2020.

provide that it shall adopt acts on a proposal from the Commission. It shall act unanimously in those areas in which unanimity is required for the adoption of a Union act."

- **Choice of the instrument**

Stepping-up operational police cooperation in the EU requires strong political engagement by all relevant actors, notably in the Member States.

Cross-border operational police cooperation typically involves the physical intervention of uniformed and armed police forces from one Member State in the territory of other Member States. The intervention is to conduct preventive and repressive missions that may lead to the provisional arrest and detention of individuals until the arrival of the authorities of the other Member State.

These types of operations touch upon the core of Member States' sovereignty, and can lead to constitutional issues, rendering any new EU legislation in this area a very sensitive issue. This is the reason why unanimity tends to be required in the Council when voting on EU legislation in operational cooperation.

The Commission considers that a proposal for EU legislation with binding force to harmonise this type of operational police cooperation is premature at this stage. Nonetheless, it can be noted that, although not legally binding, under the TFEU, as interpreted by the Court of Justice of the EU, Recommendations are legal acts and, as such, cannot be regarded as having no legal effect and are to be taken into account at national level where appropriate.

Building on previous relevant Council Conclusions[42] and good practice that some Member States have already implemented, the Commission decided to propose a Council Recommendation, which puts forward a number of recommended actions that aim to improve the way in which Member States cooperate operationally. The Commission plans to monitor the implementation of this Recommendation and assess the need for an EU legislation with binding force on cross-border operational police cooperation in the future.

- **Subsidiarity**

EU action is needed to properly address the problems identified in the first section of this explanatory memorandum. Without action at EU level, Member States alone will continue to face uncertainties and obstacles stemming from different rules on the rights of officials when operating in other Member States. Also, to solve long-standing technical interconnectivity issues that contribute to reducing the appeal of joint operations, an approach at EU level is needed. Given the transnational nature of serious and organised crime, it is essential to ensure swift cooperation between police and judicial authorities in relation to the operational measures at issue in a cross-border context.

The EU is better equipped than individual Member States to ensure the coherence of actions taken at the national level, address the divergence of practices, prevent duplications and uncertainties and eventually ensure an efficient counter-action to cross-border crime. EU action in response to the identified problems is expected to bring added value for the EU and therefore to its citizens.

[42] Council conclusions on certain aspects of European preventive policing, 10062/19, 6 June 2019; Council Conclusions on Internal Security and European Police Partnership, 13083/1/20, 24 November 2020.

- **Proportionality**

This proposal recommends that Member States take a number of measures to address obstacles and strengthen existing relevant cross-border cooperation mechanisms and tools. It does not contain recommendations that go against what existing EU legislation provides for. Instead, Member States should take the recommended measures in compliance with that EU legislation. In addition, Member States are not expected to alter, and indeed to continue to apply, conditions and safeguards contained in national law relating to the operational activities covered, insofar as they are compliant with EU legislation and not specifically addressed in this Recommendation.

Given the sensitivity of measures on operational cross-border police cooperation, and the willingness expressed by Member States to engage in a further dialogue on what measures should be put in place to strengthen operational police cooperation, a proposal for a Council Recommendation is the most appropriate and proportionate choice. The reason being is that it does not go beyond what is necessary, at this stage, to achieve the objectives of improving operational police cooperation across the EU.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Ex-post evaluations/fitness checks of existing legislation**

No fitness check of existing legislation in operational cooperation was conducted for this proposal. This is because the EU baseline legislation is very limited, and systematically complemented by bi- and multilateral cooperation agreements between Member States.

- **Stakeholder consultations**

The **period of time** during which the stakeholders' consultation took place was between July 2019 and July 2021. The consultation involved **targeting stakeholders** from a wide range of subject matter experts, national authorities, civil society organisations, and from members of the public on their expectations and concerns relating to strengthening law enforcement cooperation in the EU.

The Commission used different **means of engagement** such as targeted questionnaires, conducted experts' interviews and organised several thematic workshops with Member States and Schengen associated countries' representatives. The subject matters of this Recommendation were also discussed in the **Council's Working Parties** (e.g. Law Enforcement Working Party – Police and Customs subgroups, Standing Committee on Operational Cooperation on Internal Security).

The Commission also launched a **public consultation**, hosted on the Commission's website in all EU official languages for eight weeks, from 19 April 2021 to 14 June 2021.

Numerous consultation activities were also **conducted by the contractor** during the preparation of an external '***Study*** *to support the preparation of an impact assessment on EU policy initiatives facilitating cross-border law enforcement cooperation.*'

The **aim of the consultation** was to receive relevant input from stakeholders to enable an evidence-based approach to preparing the proposed measures to improve law enforcement cooperation between Member States.

The **results of all these consultation activities** have been duly taken into account in preparing this Recommendation.[43] The consultation activities used the main elements of the methodology used in an impact assessment, starting with the problem definition and exploring the most suitable options.

- **Impact assessment**

The proposed recommendations will, if adopted in their current form and effectively acted upon, improve cross-border operational police cooperation and will have a significant positive impact on preventing and detecting crimes in the Member States.

However, given the unanimity principle covering the relevant operational police cooperation measures, and sovereignty concerns expressed by some Member States in the consultation phase, as noted above, the Commission considers that a proposal for EU legislation with binding force to govern such cooperation is premature at this stage.

Instead, this Recommendation calls upon Member States to strengthen existing aspects of cross-border operational police cooperation, building on good practice which have already been implemented and tested by Member States, including in a bilateral and a multilateral contexts.

This proposal for a Council Recommendation on cross-border operational police cooperation is therefore not supported by an impact assessment.

4. FUNDAMENTAL RIGHTS

By improving Member States competent authorities' ability to cooperate across intra-EU borders, within the limits set by relevant EU and national legislation, this Recommendation will contribute to better protecting citizen's lives and their security. Any interference with fundamental rights resulting from the Recommendation is justified and does not go beyond what is necessary and proportionate.

On personal data protection, the impact is considered to be neutral. This Recommendation is likely to result in a quantitative increase in the exchange of personal data between Member States, in line with the expected increase in cross-border operational police cooperation. This additional exchange of personal data will however be subject to the same robust rules and procedures already in place to process such data, in line with EU law, in particular the Law Enforcement Directive[44].

As regards other fundamental rights, such as minimum procedural rights of suspects and accused persons under the EU Directives on procedural rights[45] (the right to information when

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43 SWD(2021) 375, Stakeholder consultation, synopsis report.

44 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.

45 Directive 2010/64/EU on the right to interpretation and translation in criminal proceedings, Directive 2012/13/EU on the right to information in criminal proceedings, Directive 2013/48/EU on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty, Directive (EU) 2016/1919 on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings, Directive (EU) 2016/343 on the strengthening of certain aspects of the presumption of

apprehending a suspect, the right to interpretation and the right of access to a lawyer), the impact is neutral. This Recommendation, which would lead to an increase of the existing cross-border police operations, does not undermine or change the applicable rules on procedural rights. Likewise, rules and standards as defined in other areas of EU law remain applicable, in line with the obligation by Member States to respect fundamental rights as enshrined in the Charter of Fundamental Rights of the EU.

5. BUDGETARY IMPLICATIONS

The budgetary implications of this Recommendation depend notably on the Council's response to this proposal for a Recommendation and the extent to which Member States subsequently give effect to these recommendations.

As some Member States are more advanced than others in their level of cooperation, the cost of implementing the proposed recommendations will vary between Member States. The cost will reflect a gradual and incremental increase in the existing operational cooperation between Member States, as the effect of implementing the recommended measures takes place over time.

Given the nature of the measures that are to be put in place, the costs at national level could, to a considerable extent and subject to the applicable conditions, be covered by Member States' programmes under the Internal Security Fund.[46] The Internal Security Fund includes specific objectives to "*improve and facilitate the exchange of information*", to "*improve and intensify cross-border cooperation*" and to "*support the strengthening of Member States' capabilities in relation to preventing and combating crime, terrorism and radicalisation, as well as managing security-related incidents, risks and crises*.[47]" Apart from the costs potentially covered by Member States' programmes under the Internal Security Fund, there will be no other costs borne at EU level.

6. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

The Commission calls on the Council to adopt the proposed Recommendation **by June 2022** at the latest.

In the view of the Commission there should be a standing discussion point on cross-border operational police cooperation in the relevant working party of the Council, so as to allow for that working party to serve as a permanent forum for Member States' discussions on the issues addressed in, and in particular the follow-up given to, this Recommendation.

The Commission should report **one year** after the adoption of this Recommendation on the progress made by Member States in implementing it. The report should assess if there is a need for EU legislation with binding force on the forms of cross-border operational police cooperation covered.

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innocence and of the right to be present at the trial in criminal proceedings, Directive (EU) 2016/800 on procedural safeguards for children who are suspects and accused persons in criminal proceedings.

[46] Regulation (EU) 2021/1149.

[47] See Article 3(2) of Regulation (EU) 2021/1149.

- **Detailed explanation of the specific provisions of the proposal**

Section 1 defines the key terms in the Recommendation.

Section 2 makes recommendations aimed at **addressing obstacles to the intervention of police officers in other Member States**, in the context of cross-border hot pursuits, cross-border surveillances, and joint patrols and other joint operations. The recommendations aim to increase the current list of crimes[48] for which cross-border hot pursuits and surveillances can be used, and to remove the geographical and temporal limitations that some Member States have established, which create barriers for such operations. They aim at aligning the rules on the conferral of executive power between Member States in order to increase the clarity and certainty of what police officers can do when engaging in cross-border hot pursuits, surveillances and joint operations.

The recommendations on cross-border hot pursuits relate not only to the crossing of land borders, but also of water (sea, river, lake) and air borders. They also relate to the use by the police officers involved of their service weapon not only in legitimate self-defence, but also in the defence of others. On these points, the recommendations go beyond what is provided for in Article 41(5)(b) and (e) of the CISA. However, Article 41(10) of the CISA allows for the adoption of additional provisions when implementing Article 41. This includes in this case the conditions under which the hot pursuit may be conducted.

Section 3 makes recommendations aimed at **promoting cross-border police cooperation as a tool to counter migrant smuggling and support the prevention and detection of irregular migration.** Member States should use targeted joint operations in specific intra-EU border areas, based on analysis[49], to counter migrant smuggling and prevent and detect illegally staying migrants and cross-border crime linked to irregular migration. Member States should also ensure coordination at national level between the competent authorities involved in the joint operations and those competent to further handle third country nationals apprehended for an illegal stay. They should do so, in particular, using the mechanisms referred to in Article 6(3) of Directive 2008/115/EC.[50]

Section 4 makes recommendations aimed at **enhancing cross-border police cooperation to counter trafficking in human beings and identifying and protecting victims**. Member States should use joint operations to counter trafficking in human beings and to identify, provide safety and support to victims. Potential victims of trafficking in human beings can be detected and identified in the context of joint operations. They should be immediately referred to assistance, support and protection services, including in cooperation with civil society organisations where appropriate. Early identification of victims is also crucial in enabling police authorities to better investigate and punish traffickers. In this context, training law enforcement authorities in detecting cases of trafficking in human beings is vital.

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48 Article 40(7) and Article 41(4) of CISA sets out the list of crimes for which cross border surveillances and hot pursuits, respectively, can be started. These lists can also be found in the various bi- and multilateral agreements between Member States.

49 Pursuant to Article 4(1)(f) of the Europol Regulation (EU) 2016/794, Europol prepares threat assessments, strategic and operational analyses and situation reports. Europol's flagship report is the EU Serious and Organised Threat Assessment (SOCTA), which presents inter alia key locations of crime in the EU. Similarly, pursuant to Article 29(1) of the Frontex Regulation (EU) 2019/1896 Frontex provides risk analysis. Recital (11) of the Frontex Regulation clarifies that, in the context of European integrated border management, risk analysis covers the Schengen area.

50 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. 98–107.

Section 5 makes recommendations aimed at **transforming existing Police and Customs Cooperation Centres (PCCCs) in intra-EU border areas into Joint Police and Customs *Stations (JPCS)***. In addition to their current tasks of regional cross-border information exchange, Joint Police and Customs Stations should develop the capacity to establish, support, coordinate and conduct permanent forms of operational cooperation in cross-border areas, such as joint patrols and other joint operations. They should produce joint analysis of cross-border crimes that are specific to their border area, and share them through the national Single Point of Contact (SPOC) with all Member States and competent EU agencies, such as Europol. Such targeted joint operations would be governed by the rules on the exercise of police powers in the intra-EU border areas, notably those set out in Article 23 of the Schengen Borders Code. This is to ensure that they do not have an effect equivalent to border controls. Member States should also develop the capacity to jointly support investigations into cross-border crimes occurring in their region, in conformity with applicable legislation and based on relevant legal authorisations as required and issued under such legislation.

Section 6 makes recommendations aimed at **better planning, coordinating and supporting joint operations across the EU**. Member States and the Commission should create a coordination platform where Member States can exchange information on their needs and priorities. The aim is to better target joint operations especially during large events (e.g. large sports events, international summits), at specific times (e.g. holiday seasons), and to help address specific crimes waves (e.g. terrorism, drug trafficking, match-fixing, trafficking in counterfeit goods, credit card fraud, pickpocketing and other property crimes), perpetrated notably by serious and organised crime groups, making use where appropriate of existing EU financing and the outcomes of EU security research and innovation projects. Member States should instruct their national SPOC to coordinate such joint operations, including joint patrols, from and to other Member States. They should also develop joint threat assessments and risk analyses, and annual needs assessments by exchanging information on upcoming large-scale events, threats to public order, safety, internal security and mobility patterns of citizens, notably during tourist seasons. This approach should help prepare and set up more targeted joint patrols and other joint operations, including coordinated police checks in intra-EU border areas. Over time, it should enable the targeting of key crime locations in the EU as described in the EU SOCTA 2021.

Section 7 makes recommendations aimed at ensuring **effective availability of information and communication during cross-border operations**. Member States should equip their police officers with tools that allow them to access remotely and securely their own databases in line with national law, as well as EU international and international databases via the European Search Portal. The aim is to allow them to carry out their police functions during cross-border operations, for example by carrying out identity checks. Member States should also equip their police officers engaged in cross-border operations with secure communication means (e.g. instant messenger tool) that operate across borders allowing to interconnect and communicate directly in real time with the officers of the hosting Member State. Member States should make use of the technical solutions to be provided by Europol's innovation lab, to ensure the interconnectivity of secure communication means across borders.

Section 8 makes recommendations aimed at **moving towards a common EU culture of policing by significantly increasing joint trainings** on operational police cooperation. Member States should set up joint training and exchange programmes for their police cadets to build long-term knowledge and confidence between police forces in the EU. The joint training should follow the successful example of the Franco-Spanish joint Gendarmerie Nationale/Guardia Civil training programme. They should develop joint ongoing development

courses and exchange programmes for frontline police officers and crime investigators to improve their skills and knowledge on cross-border operational cooperation. In particular, on relevant legislation, rules of engagement, tools, mechanisms, professional standards and ethics, procedures and best practice. These could range, with CEPOL's[51] support, from online training modules to officer exchanges and should simulate real situations. Language courses for officers from intra-EU border areas should be significantly stepped-up. Member States should also align the programme of their national police academies to include accredited European cross-border operational police cooperation courses. They should reflect on the possibility to create large-scale and long-term joint training and exchange programmes for police cadets and Member States' officers in operational police cooperation.

Section 9 contains **final recommendations**. Member States are invited to make use of the forum offered by the relevant working party of the Council, referred to above, to discuss issues related to cross-border operational police cooperation as covered by this Recommendation, and in particular issues relating to the implementation of this Recommendation.

In addition, Member States are invited to initiate within six months of the adoption of this Recommendation, a process to **change their national rules and bi- and multilateral agreements with other Member States** in order to implement the measures of this Recommendation. One year after the adoption of the Recommendation, the Commission should publish a report assessing the Member States' implementation of this Recommendation.

[51] The European Union Agency for Law Enforcement Training as established by Regulation (EU) 2015/2219 of the European Parliament and of the Council of 25 November 2015 on the European Union Agency for Law Enforcement Training (CEPOL) and replacing and repealing Council Decision 2005/681/JHA. OJ L 319, 4.12.2015, p. 1–20.

2021/0415 (CNS)

Proposal for a

COUNCIL RECOMMENDATION

on operational police 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,

Having regard to the opinion of the European Parliament[52],

Whereas:

(1) Cross-border surveillance and hot pursuits are indispensable operational police cooperation instruments without which criminals can escape the police by crossing the border, taking advantage of the change of jurisdiction and absence of continuity of police 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 to adjust certain rules of engagement in cross-border police operations to monitor and arrest criminals in surveillance, hot pursuits, and joint operations.

(2) 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. Existing structures such as the Police and Customs Cooperation Centers should expand their current role to become capable of planning, supporting, coordinating and conducting 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.

(3) Criminal networks 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 ("the Schengen area") to facilitate the unauthorised movements of irregular migrants and exploit the vulnerable situation of victims for profit. 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

[52] OJ C […], […], p. […].

Parliament and of the Council[53], 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.[54] 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.

(4) The limited availability of police forces that Member States can deploy abroad and the lack of coordinated deployment based on prior joint analysis can render police deployments in other Member States ineffective. A Union coordination platform where Member States can exchange on their needs and priorities for joint patrols and other joint operations with a pan-European dimension could create the necessary structure to conduct 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.

(5) Communication and access to available information are critical for successful cross-border operational cooperation. Front line officers acting in another Member State should have real-time access through mobile solutions, such as handheld devices or in-car mounted police 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 make use of the technical solutions to be provided by Europol's innovation lab, 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 vehicles, for example through GPS tracking or drones, during a cross-border police operation.

(6) Effective cross-border operational police cooperation requires moving towards a common Union culture of policing. Setting up joint initial trainings and exchange programmes between police cadets on matters relating to such cooperation and continuous development courses on those matters for front line officers and crime investigators are instrumental in building skills, knowledge and confidence. It is

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53 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).

54 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.

important that Member States adjust and align the curricula of their national police academies, in all levels of training to include accredited cross-border operational police cooperation courses, and career paths for cadets and officers who graduate from these trainings. Member States should also make best use of the European Union Agency for Law Enforcement Training (CEPOL) by providing their training needs and support the agency's activities, aligning 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 cadets and officers in the field of cross-border operational police cooperation.

(7) 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 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 alignment of their rules and agreements, other measures to address obstacles to the effectiveness and efficiency of cross-border police cooperation operations, reporting on the progress made, as well as issues relating to the necessary guidance and good practices.

(8) 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 their national rules and bi- and multilateral agreements with other Member States, as relevant, in order to give effect to the recommended measures and subsequently complete that process as soon as reasonably possible.

(9) The progress made in giving effect to this Recommendation should be reviewed after a certain time period. Therefore, one year 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.

(10) 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)[55], 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.

(11) 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, and to national law in accordance with Union law. For example, the carrying and use of service weapons, the use of road traffic privileges, the use of technical means for conducting cross-border surveillances and the performance of identity

[55] 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).

checks and interception of persons trying to avoid such checks, referred to in this Recommendation, may be subject to such rules.

(12) 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.

(13) 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[56]; Ireland is therefore taking part in the adoption of this Recommendation and is bound by it, except for those sections.

(14) 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*[57] which fall within the area referred to in Article 1, points A and H of Council Decision 1999/437/EC.[58]

(15) 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*[59] 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[60] and with Article 3 of Council Decision 2008/149/JHA.[61]

(16) 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

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56 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).

57 OJ L 176, 10.7.1999, p. 36.

58 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).

59 OJ L 53, 27.2.2008, p. 52.

60 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).

61 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).

Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis*[62] 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[63] and with Article 3 of Council Decision 2011/349/EU.[64]

(17) 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[65] and (EU) 2018/934.[66]

(18) 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.[67]

(19) 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:

1. DEFINITIONS

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

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62 OJ L 160, 18.6.2011, p. 21.

63 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).

64 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).

65 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).

66 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).

67 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).

(a) 'cross-border hot-pursuit' means a police 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) 'cross-border surveillance' means a police 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;

(c) 'joint operations' means police operations, including joint patrols and other joint operations in the field of public order, public security and crime prevention, jointly carried out either in intra-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) 'Single Point of Contact' means the national central body responsible for international police cooperation, referred to in Article 39(3) of the Convention Implementing the Schengen Agreement;

(e) '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;

(f) 'intra-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 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 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;

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. 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.

(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 weapon and ammunition;

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

iii. stop, arrest or provisionally detain a suspect, 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;

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

v. use their GPS systems to have those officers' vehicles tracked by the competent law enforcement authority of that other Member State.

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;

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;

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 central authority responsible for coordinating inbound and outbound cross-border

surveillances, 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.

(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 weapon and ammunition;

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

iii. use technical means necessary to conduct the cross-border surveillances, including GPS trackers, drones, audio and video equipment.

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 the following:

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

ii. to wear their uniform and carry their service weapon and ammunition;

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

iv. operate their radio facilities in intra-EU border areas.

(b) Member States should:

i. 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 intra-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.

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 migrant smuggling;

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

(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. JOINT POLICE AND CUSTOMS STATIONS

(a) Member States should expand the current tasks of their existing Police and Customs Cooperation Centres by:

i. carrying out, supporting, and coordinating joint operations in intra-EU border areas;

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

iii. supporting investigations into cross-border crimes occurring in their intra-EU border areas.

(b) Member States should, in view of those expanded tasks of their existing Police and Customs Cooperation Centres, rename them as Joint Police and Customs Stations.

6. A COORDINATION PLATFORM FOR JOINT OPERATIONS

(a) Member States, together with the Commission and Europol, should:

i. jointly set up a single coordination 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) ;[68]

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

ii. jointly establish, based on information provided by competent Union agencies and Member States, and with the input from their Joint Police and Customs Stations, a single regular report analysing the risks and needs for joint operations, which Member States can use to target their joint operations.

(b) Member States should:

i. provide the coordination 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;

ii. designate the Single Point of Contact as a national contact point for the coordination of such joint operations.

[68] 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)).

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 police 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 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 make use of the technical solutions to be provided by Europol's innovation lab, to ensure secure real-time direct communication across borders.

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

(a) Member States should:

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

ii. adjust and align the curricula of their national police academies, in all levels of training, to include accredited European cross-border operational police cooperation courses;

iii. design and implement career paths for cadets and officers who completed joint initial training, exchange programmes or specific cross-border operational police cooperation courses;

iv. set up joint continuous professional development courses and initiatives for front line police officers and crime investigators to develop skills and knowledge on cross-border operational police 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;

vi. align their training portfolio to the priorities related to cross-border operational police 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 cooperation and support relevant CEPOL activities;

viii. reflect on the possibility of creating large-scale and long-term pan-European joint training and exchange programmes for police cadets and officers in the field of cross-border operational police 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 take 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) One year 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