Fight against crime: general availability of information for Member States' law enforcement authorities and for Europol officers

2005/0207(CNS) - 12/10/2005 - Legislative proposal

PURPOSE: to determine the conditions and modalities under which certain types of information, that are available to competent authorities of a Member State, shall be provided to equivalent competent authorities of other Member States and Europol, in order to assist them in the execution of their lawful tasks for the prevention, detection or investigation of criminal offences.

LEGISLATIVE ACT: Council Framework Decision.

CONTENT: The Hague programme invited the Commission to present legislation by the end of 2005 at the latest to implement a "principle of availability". From an analytical perspective, seven main obstacles exist to information to be generally available throughout the EU, that is relevant to make possible, facilitate, or accelerate the prevention, detection or investigation of criminal offences:

-Bi- and multilateral agreements between Member States are either geographically restricted or do not oblige Member States to provide information, making the exchange of data dependent on discretionary factors.

-Current forms of law enforcement cooperation usually require intervention of national units or of central contact points. Direct information exchange between authorities is still the exception.

-No standardised procedure exists yet at EU level to request and obtain information.

-No efficient mechanism exists at EU level to establish whether and where information is available.

-Differences in the conditions to access and exchange information, as well as in distinctions between police, customs and judicial cooperation interfere with an efficient exchange of information.

-Differences in protection standards hinder the exchange of confidential information.

-Absence of common rules to control the lawful use of information that has been obtained from another Member State and few possibilities to trace the source and original purpose of the information.

This Framework Decision obliges Member States to ensure that relevant information, i.e. information able to make possible, facilitate, or accelerate the prevention, detection or investigation of criminal offences, controlled by authorities or by private parties designated for this purpose, is shared with equivalent competent authorities of other Member States if they need the information to carry out their lawful tasks. The information is also to be shared with Europol, insofar as the access to the information by Europol is necessary for the performance of its legitimate tasks, and complies with the Europol Convention and its Protocols. Available information is shared either by online access, or by transfer based on an 'information demand' after matching solicited information with index data that Member States shall provide for information that is not accessible online.

No obligation exists to collect information by means of coercive measures.

Where national law requires that transfer of information requires authorisation from an authority other than the one that controls it, the authority that controls or handles this information (the "designated authority") shall obtain this authorisation on behalf of the law enforcement body in the other Member State that needs the information.

Refusal of transfer further to an information demand is limited to grounds fixed by the Framework Decision that, moreover, only apply if less restrictive options have proven to be of no avail. The Framework Decision applies to information exchange prior to the commencement of a prosecution, and does not affect mutual legal assistance mechanisms.

The provisions of the Framework Decision go beyond the exchange of information provided for by the Schengen Convention and constitute a new form of cooperation which did not previously exist. For this reason, this Framework Decision is not a development of the Schengen Acquis.

The Framework Decision seeks to ensure full respect for the right to to protection of personal data and the principles of legality and proportionality of criminal offences and penalties. It does so by authorising only national authorities competent for the investigation of criminal offences to obtain information, and by obliging the authorities involved to verify the necessity and the quality of the information. Furthermore a committee will establish ex ante that information is only available for the equivalent competent authority.

The processing of personal data pursuant to this Framework Decision will be done in accordance with the Council Framework Decision on the protection of personal data processed in the framework of police and judicial co-operation in criminal matters and the Europol Convention respectively.

FINANCIAL IMPLICATIONS: A committee, composed of the representatives of the Member States and chaired by a representative of the Commission, shall assist the Commission in order to determine the equivalence between competent authorities of the Member States and to develop, where necessary, technical details of the exchange of information. This Committee will probably meet regularly, estimated three times a year, whenever necessary. One participant per Member State will have to be reimbursed.

Period of application: starting 2006.

Overall financial impact of human resources and other administrative expenditure: total EUR 2,172 million (EUR 0.362 million per year for six years.)

Total staff: 1.75

Overall financial impact of human resources: EUR 189,000 per year

Other administrative expenditure deriving from the action: EUR 55.000 per year.