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COVER NOTE

from	Secretariat
to	The Convention
Subject :	Contribution by Mr. Sören Lekberg, member of the Convention: - " Freedom, security and justice: How to increase the decision-making capability of the European Union in order to combat crime "

The Secretary-General of the Convention has received the contribution annexed hereto from,
Mr. Sören Lekberg, member of the Convention.

“Freedom, security and justice: How to increase the decision-making capability of the European Union in order to combat crime”

Introduction

The shortcomings of cross-border police co-operation and co-operation in criminal matters in the European Union have become apparent in the years following the entry into force of the Amsterdam Treaty. It is now evident that

- there is often a discrepancy between the political will that is being expressed, inter alia at the level of Heads of State and Government, and the concrete results that are being achieved,
- there is a lack of long term planning and clear goals as to what should be achieved,
- negotiations in the Council and its working groups are often cumbersome and slow and the resulting legal instruments are many times meagre as regards their content,
- there is no proper mechanism for the follow-up of the implementation of concrete decisions.

These deficiencies contrast against the fact that our citizens have given high priority to the efforts of the European Union to combat cross-border crime and that they want to see concrete results. It is also clear that this type of criminality is increasing and taking new and more complex forms. Furthermore, the enlargement of the European Union with decision-making among 25 member states is a complicating factor that must be taken into account.

It is obvious against this background that measures must be taken to make work in the area more effective. At the same time regard must be given to the specific nature of the co-operation in this field. The work and organisation of the national police and the content of the national criminal law are issues that are at the core of the competencies that define a national state. Measures at the European level in these areas, which include the ultimate use of a state's power against the individual, must therefore also in the future be something in which national parliaments should have a decisive saying.

Clarify the scope and the goals

Articles 29-31 in Treaty on European Union set out the framework for police co-operation and co-operation in criminal matters. The provisions are at the same time too detailed and too narrow to allow for action at European level in all areas where this has proved to be necessary. They are also to a large extent outdated and do not cover important novelties as, for example, the principle of mutual recognition and the European arrest warrant.

The articles that set out the scope for European co-operation to combat crime should be redrafted in a more general and goal oriented way. Focus should be on the combating of organized cross-border criminality such as terrorism, drug trafficking and trafficking in human beings, in particular when it involves young girls and boys for sexual exploitation. In certain sensitive areas more detailed provisions may be necessary to define the scope for the co-operation, but in general the details of the co-operation and the priorities ought to be decided by the Council in action plans that can be followed up in a coherent way and amended – also with short notice - when necessary. Good

examples of such action plans are the conclusions from the Tampere European Council and the action plan to combat terrorism that was agreed by the Extraordinary European Council in Brussels in September 2001.

Simplify and strengthen the decision-making process

As a general rule, decisions in the area of police co-operation and co-operation in criminal matters should be taken by qualified majority. This is absolutely essential if the effectiveness of the decision-making process is to be increased or at least maintained in an enlarged European Union.

However, a system with qualified majority voting can be constructed in different ways. Measures will have to be taken to preserve the intergovernmental character of the co-operation in the area. In order to achieve this, it is necessary to include in the Treaty some sort of safeguard for the role of national parliaments in the decision making process. Such a safeguard is essential at least when it comes to central penal and procedural law and decisions that would imply a transfer of executive powers against the individual from national authorities to the European level.

One option could be to make use of the possibility that was introduced in Article 24 of the Nice Treaty. According to this provision, no agreement shall be binding on a Member State whose representative in the Council states that it has to comply with the requirements of its own constitutional procedures. Other possibilities include the use of constructive abstention or the right for a Member State to declare, for important and stated reasons of national policy, that it intends to oppose the adoption of a decision to be taken by qualified majority in which case a vote shall not be taken (see Article 23.1-2 in Treaty on European Union).

Furthermore, to secure that the right priorities are being made as well as the quality of new proposals for legal instruments the Commission's right of initiative should be strengthened. At the same time there should, in the framework of an intergovernmental co-operation, remain some sort of possibility for Member States to initiate new legal instruments.

One way to improve the situation could be to allow a proposal from a Member State only when it is co-sponsored by a certain number of other members of the Council. Another possibility could be to give the Commission a right of precedence to take a new initiative when this has been put on the agenda in an action plan or otherwise.

Enhance the follow-up of implementation of decisions

Contrary to the situation in the first pillar, the third pillar has no proper mechanism for controlling how Member States are implementing legal acts. We know from experience that implementation in many cases has been very slow and not seldom even incomplete or otherwise incorrect. Member States have tried to compensate for this deficit by creating among themselves a mutual evaluation mechanism, but this is only applicable in certain limited areas that has been decided by the Council and cannot in any event be compared to a treaty-based systematic follow-up of the numerous different decisions that have been and are being taken.

The control of the national implementation of legal instruments should be regulated in the Treaty. The method that is being used successfully in the first pillar, with an important role for the Commission and the possibility to bring the matter before the Court of Justice, should be considered. As regards the powers of the court, account will have to be taken of the intergovernmental character of work in the area.
