

TREATY OF LISBON

ARTICLE-BY-ARTICLE COMMENTARY ON THE EUROPEAN UNION TREATIES

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CHAPTER 5 POLICE COOPERATION

ARTICLE 87

1. *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.*

2. *For the purposes of paragraph 1, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, may establish measures concerning:*

- (a) the collection, storage, processing, analysis and exchange of relevant information;*
- (b) support for the training of staff, and cooperation on the exchange of staff, on equipment and on research into crime-detection;*
- (c) common investigative techniques in relation to the detection of serious forms of organised crime.*

3. *The Council, acting in accordance with a special legislative procedure, may establish measures concerning operational cooperation between the authorities referred to in this Article. The Council shall act unanimously after consulting the European Parliament.*

In case of the absence of unanimity in the Council, a group of at least nine Member States may request that the draft measures be referred to the European Council. In that case, the procedure in the Council shall be suspended. After discussion, and in case of a consensus, the European Council shall, within four months of this suspension, refer the draft back to the Council for adoption.

Within the same timeframe, in case of disagreement, and if at least nine Member States wish to establish enhanced cooperation on the basis of the draft measures concerned, they shall notify the European Parliament, the Council and the Commission accordingly. In such a case, the authorisation to proceed with enhanced cooperation referred to in Article 20(2) of the Treaty on European Union and Article 329(1) of this Treaty shall be deemed to be granted and the provisions on enhanced cooperation shall apply.

The specific procedure provided for in the second and third subparagraphs shall not apply to acts which constitute a development of the Schengen acquis.

Main related articles

Art. 3 (2) of the TEU; arts 4 (2), j), 67, 69 to 76 and 276 of the TFEU; arts. 39 to 47, and 92 to 119 of the Convention implementing the Schengen Agreement (CISA); Protocol 19 on the Schengen *acquis* integrated into the framework of the European Union; Protocol 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice; Protocol 22 on the position of Denmark; Arts. 9 and 10 of Protocol 36 on transitional provisions.

Main related secondary legislation

Council Framework Decision of 13 June 2002 on joint investigation teams; Council Decision 2003/170/JHA of 27 February 2003 on the common use of liaison officers posted abroad by the law enforcement agencies of the Member States (amended by Decision 2006/560/JAI); Regulation (EC) No 1987/2006 of the European Parliament and of the Council and Decision 2007/533/JHA on the establishment, operation and use of the second generation Schengen Information System (SIS II); Council Framework Decision 2006/960/JHA on simplifying the exchange of information and intelligence between law enforcement authorities of the Member States of the European Union; Council Decision 2008/615/JHA on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime (incorporation of the Prüm Treaty into the legal framework of the European Union); Council Decision 2008/617/JHA on the improvement of cooperation between the special intervention units of the Member States of the European Union in crisis situations; Council Decision 2008/852/JHA on a contact-point network against corruption; Council Decision 2009/902/JHA setting up a European Crime Prevention Network (EUCPN) and repealing Decision 2001/427/JHA; Council Decision 2009/796/JHA of 4 June 2009 amending Decision 2002/956/JHA setting up a European Network for the Protection of Public Figures; Regulation (EU) 2015/2219 of the European Parliament and of the Council on the European Union Agency for Law Enforcement Training (CEPOL) and replacing and repealing Council Decision 2005/681/JHA; Directive (EU) 2016/680 of the European Parliament and of the Council 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. Law 53/2008 on Internal Security (amended by Law 66-A/2008, Law 59/2015 and Decree-Law 49/2017); Law 74/2009 (exchange of information; transposition of the Council Framework Decision 2006/960/JAI). Decree-Law 49/2017 (Single Point of Contact concerning police cooperation and information exchange).

Jurisprudence

Judgments of the Court of Justice of 16.06.2005 (C- 105/03, “Pupino”), 31.01.2006 (C 503/03, “Commission v. Spain”), 3.09.2008 (C-402/05 P e C-415/05, “Kadi”), 16.04.2015 (C-540/13 “European Parliament v Council”), 22.09.2016 (C_14/15 and C-116/15, “European Parliament v Council”) and 25.01.2017 (C-640/15 “Vilkas”); Judgement of the Court of First Instance (now the General Court), of 12.12.2006 (T-228/02, “Modjahedines”).

Doctrine

BELLUCCI, SERENELLA, “Schengen: L'Europa senza frontiere e le nuove misure di cooperazione tra polizie”, Rome, 1999; BENYON, JOHN, “Police co-operation in Europe: an investi-