



Council of the
European Union

Brussels, 7 June 2018
(OR. en)

9443/06
DCL 1

SCH-EVAL 95
ENFOPOL 95
COMIX 470

DECLASSIFICATION

of document:	ST9443/06 RESTREINT UE/EU RESTRICTED
dated:	16 May 2006
new status:	Public
Subject:	Schengen evaluation of the new Member States - Answers from Hungary to the questions set by the Belgian Delegation concerning the draft-evaluation report on Police Cooperation

Delegations will find attached the declassified version of the above document.

The text of this document is identical to the previous version.

RESTREINT UE



COUNCIL OF
THE EUROPEAN UNION

Brussels, 16 May 2006

9443/06

RESTREINT UE

SCH-EVAL 95
ENFOPOL 95
COMIX 470

NOTE

from : Hungarian delegation

to : Schengen Evaluation Working Party

No. prev. doc. : 8395/06 SCHEVAL 61 ENFOPOL 69 COMIX 363 RESTREINT

Subject : Schengen evaluation of the new Member States

- Answers from Hungary to the questions set by the Belgian Delegation concerning the draft-evaluation report on Police Cooperation

1. Further clarification of secret information gathering

Under the provisions of the Act XXXIV of 1994 on the Police, police officers (and officers of the other law-enforcement agencies) are entitled to carry out secret information gathering before the formal start of an investigation (in the so-called detection phase). as visible, the most sensitive forms of the secret information gathering are subject to a judicial permit, while others are subject to a prosecutor's consent or to the decision of the respective head of unit. The most typical forms of secret information gathering are the employment of informers, issue and use of cover documents, use of shell companies, interception of private facilities, telecommunication and correspondence, etc.

Relevant provisions of Chapter VII of this Act are attached

RESTREINT UE

2. Type and number of service weapons used in cross border cooperation

Use of service weapons by officers during cross-border operations is regulated by respective bilateral agreements of Hungary and neighbouring states. According to these agreements, officers of both contractual parties are bound by the legal system of the host country. Bilateral agreements provide for the use of service weapons in legitimate self-defence and in final necessity. This legal regulation is in full accordance both with the Second Amendment to the European Convention on Mutual Assistance in Criminal Matters and the Schengen Convention of which none requires notification on type and number of weapons imported to the territory of the other contracting state in the course of cross-border operations.

According to the Hungarian legal system, the weapon may be used only in legitimate self-defence and in final necessity. Hungarian legal system does not determine type of weapon used for defence, but the adequacy of such situations. Hungarian authorities are being informed about the fact whether foreign police officers carry their service weapons in the territory of Hungary via standard form with regard to requests for mutual legal assistance related to cross-border surveillance of the Schengen Handbook on cross-border police cooperation.

3. Use of electronic and shocking devices in Police work

As regards electronic and chemical shocking devices, we are not aware of any European norm which would ban the use of these. The use of these devices are regulated by bilateral agreements with neighbouring countries and it is only lawful to use them in a proportionate manner, in cases defined by the Act on Police, together with the use of baton and handcuffs. However, in Hungary, although lawful in theory, there is no electronic shocking device used by the Police, and, as foreign officers are bound by the Hungarian norms, they are practically not entitled to use electronic shocking devices either. Therefore, this option is rather limited to the use of tear gas sprays (chemical shocking devices).

III. Relevant provisions concerning secret collection of information on the basis of Chapter VII of the Act No. XXXIV. of 1994 (Police Act)

Section 63 (1) The Police shall be entitled, within the legal boundaries, to secretly collect information for the purposes of preventing, investigating, stopping the commission of criminal acts; finding the identity, capturing of perpetrators; finding persons under warrant or their whereabouts; or to gain evidence or to protect persons participating in the procedure or collaborating with the judiciary.

(2) The data obtained during the secret collection of information - until they are used as evidence; and the identity of persons cooperating with the Police and of covert investigators; the fact and the technical details of the information collection shall be classified as state secrets.

(3) The measures taken under paragraphs (1)-(2) and the data of the natural persons, legal entities and unincorporated organisations affected thereby shall not be disclosed.

(5) The authorised unit of the Police and, in respect of the data collected and the fact of information collection, the prosecutor and the judge shall be entitled to inspect protected state secrets without a special permit during the secret collection of information. The data and information specified in paragraph (2) may be disclosed to international and foreign criminal prosecution and judicial authorities on the basis of an international convention, treaty or agreement or, in lack thereof, on the basis of reciprocity if it is necessary for eliminating a serious and direct danger or preventing a serious criminal act, provided that the conditions of handling personal data are met by the foreign data handling organisation in respect of each data.

Secret Collection of Information not subject to a Court Permit

Section 64 (1) The Police may

- a) employ informers, trustees or other persons secretly cooperating with the Police;
- b) gather and check information concealing the purpose of the procedure or employing cover investigators;
- c) issue or use cover documents and establish and maintain cover organisations to conceal its own staff or persons cooperating with it and the police nature of the same;
- d) watch and gather information from persons suspected of a criminal act and other persons related therewith as well as premises, buildings, other objects, land and road sections, vehicles and events which may be connected with the criminal act, and record its observations by sound, image, other signal or trace recording technical devices (hereinafter: technical devices);
- e) use a trap not causing injury or detriment to health to detect the perpetrator of a criminal act or to get evidence;
- f) employ informers, trustees or other persons secretly cooperating with the Police or cover investigators to make sample purchases; and - subject to a permit from the prosecutor - cover investigators to make false purchases, confidence purchases, infiltrate in a criminal organisation and - also subject to the provisions of paragraph (4) of Section 2 - to perform a controlled delivery.

RESTREINT UE

g) If there are no other means of preventing or detecting crime or capturing or identifying the perpetrator, it may substitute the victim - in order to protect his/her life and corporeal integrity - employing a police officer.

(2) The Police may enter into secret cooperation agreements with natural persons, legal entities or unincorporated organisations.

(3) In order to discharge its tasks set out in this Act, the Police may initiate employment - for a term set out in a relevant agreement - at the organisations referred to in paragraph (2).

(6) The Police may, at the user's written request and using technical devices, monitor and record telephone calls made on the user's line within the period set out in such request. Any irrelevant information obtained and recorded in the case shall be promptly destroyed.

(8) The Police may place cover data in various public records.

Rewarding Cooperators

Section 66 (1) The Police may offer financial compensation to those who cooperate with it.

Offering the Rejection or Termination of Investigation

Section 67 (1) The Police may offer an agreement with a perpetrator on rejecting or terminating the investigation in return for certain information.

(3) No agreement shall be made with a person who committed a criminal act involving wilful murder.

Rejection of Reporting or Termination of Investigation against a Covert Investigator

Section 67/A (1) In the case of grounded suspicion of a criminal act, the prosecutor may reject the report by an order or terminate the investigation if the criminal act committed by a covert investigator infiltrated in a criminal organisation.

(3) The provisions of paragraph (1) shall not apply if the cover investigator committed a criminal act involving wilful murder.

Information Requests

Section 68 (1) The head of the investigation unit of the Police authorised to perform secret collection of information shall be entitled - subject to a prosecutor's permit - to request information relating a wilful criminal act punishable with two years' or more imprisonment from the tax authority, foreign exchange control authority, telecommunications service providers, health care institutions and the organisations handling their data as well as from other institutions handling data qualified as bank secrets, securities secrets, treasurer's secrets or other business secrets.

RESTREINT UE

The investigation authority may specify a deadline for furnishing the requested information. Provision of information shall be free and shall not be refused. The information so obtained shall be used for the declared purpose only.

(2) As an emergency measure, the data request shall be promptly satisfied without a prosecutor's previous consent if any delay would be dangerous and the case is connected with drug trafficking, terrorism, illegal arms trading, money laundering or organised crime. In this case, the data request shall be marked as 'top urgency measure'. Simultaneously with submitting a request, the prosecutor's consent shall also be sought. If the prosecutor rejects the request, the data so obtained shall be promptly destroyed by the Police.

Section 68/B (1) In order to perform its tasks, the Police may establish and maintain cover institutions.

Secret Collection of Information subject to a Court Permit

Section 69 (1) Subject to a court permit, the Police shall be entitled in the case of serious criminal acts to

- a) secretly search a private home (secret search) and record its findings;
- b) to observe and record the events taking place in a private home using technical devices (technical surveillance);
- c) to get access to and record the information contained in letters, other postal sendings, or transmitted through telephone lines or equivalent telecommunications systems (interception of telecommunications);
- d) to get access to and use data and information generated by E-mail messages exchanged on the Internet or using other computer technology (high-tech surveillance).

(3) The Police shall be entitled to use the devices and techniques of secret information collection (hereinafter: special investigation techniques) referred to in paragraph (1) according to the provisions set out therein for the purpose of finding a person searched under the suspicion of a criminal act and if the criminal act not mentioned in paragraph (1)

- a) can be connected with cross-border crime;
- b) is aimed at a minor;
- c) is perpetrated in series or in an organised manner;
- d) is connected with drugs or other narcotic substances;
- e) is connected with the counterfeiting of banknotes or securities;
- f) is perpetrated with arms;
- g) is a terrorist act or act of terrorist type;
- h) seriously disturbs public security.

(6) In the case of sub-paragraph c) of paragraph (1), the telecommunications or postal organisation shall give assistance falling within its competence.

(7) For the purposes of sub-paragraphs a)-b) of paragraph (1), 'private home' shall be deemed to include all other premises and locations open to the public.

RESTREINT UE

Section 71

(2) The judge shall make a decision within 72 hours after submitting a request for permitting the application of a special device; he/she shall either approve the request or reject it in the lack of lawful grounds.

(3) The judge may authorise the use of a special devices on a case-by-case basis for up to 90 days and may extend the permit by additional 90 days subject to a request.

Section 72 (1) If the permit procedure for the use of a special device would cause such a delay which would obviously injure the interest of criminal prosecution in the given case, the head of the investigation authority may order the secret investigation and the use of the special device for a period of 72 hours (urgency order).

(2) In the case of an urgency order the request for permit shall be promptly submitted.

DECLASSIFIED