



**COUNCIL OF
THE EUROPEAN UNION**



Council Resolution on simplifying the cross-border deployment of undercover officers in order to step up Member States' cooperation in the fight against serious cross-border crime

*2807th JUSTICE and HOME AFFAIRS Council meeting
Luxembourg, 12 and 13 June 2007*

The Council adopted the following Resolution:

"THE COUNCIL OF THE EUROPEAN UNION –

Whereas:

- (1) There is a need to step up practical cooperation between law enforcement authorities in the Member States and to continue to dismantle the remaining obstacles to cross-border cooperation, in order to combat cross-border organised crime and other types of serious crime and terrorism effectively.
- (2) The deployment of undercover officers is an important tool in clearing up serious crime, often the only one to hold out any promise of success. It should be possible to employ this tool efficiently in cross-border cases too.

P R E S S

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- (3) Article 14 of the Convention of 29 May 2000 on mutual assistance between the Member States and Article 23 of the Convention of 18 December 1997 on mutual assistance and co-operation between customs authorities allow for bilateral agreements to deploy undercover officers on a cross-border basis and should as such be retained, but do not contain sufficiently detailed mechanisms for swift and efficient co-operation in all cases in which no bilateral agreements exist.
- (4) Existing legal and practical hindrances in cross-border cooperation on undercover officer should be identified and addressed in the interests of combating cross-border crime effectively and in the interests of the police officers involved.

HEREBY instructs the relevant Council Working Party to examine in particular the following areas in order to determine to what extent they should be covered by EU level action, including if appropriate a future EU legal instrument, concerning cross-border cooperation between undercover officers, whilst respecting the different legal systems and traditions in Member States:

- requirements and procedures for the cross-border deployment of undercover officers (e.g. definition of undercover agents; definition of the scope of application; the principle of dual criminality; possible elaboration of a model agreement comparable to that for joint investigation teams; the principle of proportionality, possibly including a subsidiarity clause; exercise of powers in compliance with the domestic law of the state where these powers are to be exercised; carrying of weapons and operational command,)
- protection of undercover officers' identity
- equal legal status for national and foreign undercover officers
- possibility of seconding undercover officers abroad
- cross-border assistance in providing operational cover for undercover officers

DEEMS that the scope of future EU action concerning cross-border cooperation between undercover officers should be confined to officers acting under covert or false identity for the purpose of investigation of crimes.

DEEMS that such an instrument should be flexible and based on the principle of voluntary participation for Member States as set out in Art.32 TEU.

CALLS upon Member States or the Commission, if following the examination it is deemed to be expedient, to submit an initiative for an instrument on the basis of Article 34(2) of the Treaty on European Union, no later than 31.12.2008, to address those areas that have been identified as in need of EU legislation.

Done at Brussels, on 2007

For the Council
The President"
