



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 4 August 2006

11693/06

LIMITE

EUROPOL 66

NOTE

from : Europol
to : Article 36 Committee
Subject : Co-operation with China

Delegations please find in annex a document which the Europol Management Board recently endorsed.

In the document it is suggested to add China to the Council's list of countries with which Europol may start negotiations in order to conclude a draft co-operation agreement.

Co-operation with China

Possibility of adding China to the Council List

1 Introduction

The purpose of this document is to outline the need for and to describe the advantages of establishing a co-operation agreement with China. The Management Board is invited to discuss this report and is requested to decide whether it should be recommended to add China to the Council list of those countries with which the Director of Europol may enter into negotiations.¹

The questions quoted below in italics are those that were established as the criteria for determining new third partners as described in Annex 4 of the final report of the Management Board Partnership Ad Hoc Group.²

China is one of the countries that requested Europol to consider the possibilities of establishing a co-operation agreement, but until now Europol has not yet entered in any kind of consultations.³

2 Operational needs

“Based on HENU advice and taking into account the working priorities of Europol, the following matters should be taken into consideration:

- Are the O.C. and/or the ethnic groups originating from the country a threat to the EU MS, based on the threat assessments and strategic analysis?*
- Is the country regularly mentioned in AWFs and/or in Europol databases?*
- Is the country a target of EU criminal organisations?*
- What is the quality and quantity of the operational information and intelligence exchanged between the EU MS and the country?*

As an indication of activity, how many EU MS liaison officers are posted in the country?”

¹ As set out in Article 2 of the Council Decision of 27 March 2000 authorising the Director of Europol to enter into negotiations with third States and non-EU-related bodies, OJ C 109/01 of 13 April 2000.

² See Europol document 3710-40r2 on Procedures in relation to co-operation agreements with third States and non-EU-related bodies.

³ See Europol document 3710-242, Management Board meeting of 11 and 12 July 2006, External Strategy of Europol, Explanatory note 21 June 2006, p. 2f.

Organised crime

China is not a major target of EU criminal organisations but EU MS have experienced that criminal threats come from China into the EU. Europol has currently no China-related project.

The core activities of Chinese OC groups in Europe are illegal immigration, including all offences linked to the violation of aliens' laws, such as forgery in its various forms; trafficking in human beings for the purpose of exploitation of illegal labour and prostitution, contraband smuggling and illegal import of counterfeit goods.

Chinese OC has always had a strong international dimension by establishing strategic relationships both with native and foreign OC groups acting in the Member States. Co-operation between them runs smoothly in relation to specific international operations.

The illegal activities of ethnic Chinese groups are characterised by an intensive use of legal business structures. Traditionally, they have always focused on the restaurant business where they have developed a very mobile system of transferring people from one restaurant to another, thus making it harder for law enforcement authorities to establish effective control.

The large financial assets of Chinese OC tend to be reinvested in the acquisition of real estate, the opening of new businesses, the management of gambling activities, the taking over of firms – reorganised by using unpaid illegal labour – as well as in loan-sharking practices. Some investigations have revealed that Chinese OC groups are highly inclined to influence public administration officers in order to obtain entry visas and subsequently residence permit. Counter-measures by Chinese OC groups include the strict control of the various aspects of its members' lives, founded on the respect for hierarchy, secrecy, specific affiliation rules and the choice of 'low profile'.

It can be assumed that Chinese OC groups have reached the boundaries for the exploitation of their own communities within the EU so they could expand their activities to the wider population of the Member States. At the same time, a growing diversity and changing structures of OC is expected.

Illegal immigration

Regarding facilitated illegal immigration of Chinese into the EU and trafficking of Chinese women/minors, these are both major phenomena. Chinese OC groups are responsible for at least the beginning of the facilitation process, and are working with diaspora groups already resident in the EU.

Drug trafficking

In the sector of drug trafficking, China itself is facing a growing problem. Chinese OC is involved in the production of drugs in China and in trafficking abroad. China's geographical position close to the traditional drug harvesting areas is significant, as is the large and poorly regulated chemical/pharmaceuticals industry which facilitates production.

Counterfeiting

Chinese OC is mentioned in the OCTA both as source/supplier for counterfeit products (incl. cigarettes) and as distributor within the EU.

Liaison officers

Based on the information available at EU-level, three European member states have liaison officers posted in China.¹

3 External strategy

Based on the "Strategy for the External Dimension of Justice and Home Affairs: Global Freedom, Security and Justice" that has been adopted by the Justice and Home Affairs Council on 1 December 2005, the Management Board discussed in May 2006 the coming External Strategy of Europol until 2008.² According to the Explanatory note to the External Strategy, Europol should consider the JHA External Strategy when reflecting on negotiating new co-operation agreements, but can initiate co-operation with countries that are not explicitly mentioned in the JHA Strategy as well.³

As part of the proposed revised Europol External Strategy, Europol proposes that China be added to the Council list of third parties with which it is authorised to enter into negotiations. The proposed revised External Strategy stipulates that Europol will strive first for a strategic agreement and later for an operational agreement, provided that China's data protection legislation and practice meets the EU standards.

¹ See Police cooperation handbook, Addendum to room document 2005-02-15/02, Liaison officers, Council of the European Union, Brussels, 25 February 2005.

² See Strategy for the External Dimension of Justice and Home Affairs: Global Freedom, Security and Justice – Doc 15446/05 JAI 448 RELEX 741; Management Board Meeting of 11 and 12 July 2006, External Strategy of Europol, The Hague, 21 June 2006, File no. 3710-241.

³ See Management Board Meeting of 11 and 12 July 2006, External Strategy of Europol, Explanatory note, The Hague, 21 June 2006, File no. 3710-242, p. 2.

4 EU Political needs and possible constraints

- *“Does it fit into EU priorities/programmes and/or action/stability plans, such as:*
 - *JHA multi-annual Presidency programmes?*
 - *II Pillar decisions and preferences?*
 - *EU Action Plans?*
- *Does the country now or in the near future border the EU territory?*
- *Are there important legal and political obstacles with regard to human and fundamental rights (based on human rights evaluations by the Second Pillar WG) and data protection reports?*
- *Is there a sudden high political interest based on international developments such as terrorism?”*

China is a crucial partner for the EU because of its increasing global economic and political influence. The EU has thus an interest in a forward-looking policy of engagement in Asia and in developing a permanent and reliable relationship with China.¹

Amongst the six objects of the strategy focus in the EU-Asia Relations, the establishment of global partnerships, e.g. concerning security issues like migration and terrorism, are outlined. Additionally, the contribution to peace and security in the region and to the protection of Human Rights are vital with respect to China as well.

In 1994, a broad EU-China political dialogue has been established; high-level meetings have been extended to an annual basis. The first long-term strategy of the EU towards China has been set up in 1995. The main topics discussed are political aspects, economic and trade relations, the EU-China co-operation programme, and in the meantime sector specific dialogues and agreements as well.

The latest EU-China Summit took place in December 2004 in The Hague and led to the wish of both sides to initiate a “strategic partnership”. During the first EU-China dialogue, held in London in December 2005, the negotiations for a new Framework Agreement were supposed to be launched as soon as possible.

The current EU-China-policy is based on the EC policy paper “A maturing partnership: shared interests and challenges in EU-China relations” from 13 October 2003.² The current strategy for EC co-operation with China is defined in the “Country Strategy Paper 2002-2006”

¹ See: The EU’s relations with Asia, http://ec.europa.eu/comm/external_relations/asia/rel/index.htm

² See: The EU’s relations with China, http://ec.europa.eu/comm/external_relations/china/intro/index.htm

According to the EU policy paper on the overall EU-China dialogue¹, topics of interest in relation to Europol could be:

- Trafficking of human beings
- Illegal immigration
- Piracy and counterfeiting (including intellectual property rights)
- Terrorism
- Nuclear non-proliferation
- Drug trafficking

The human rights situation in China is evaluated twice a year via the instrument of a EU-China political dialogue, but the serious EU concerns remain since the level of civil and political rights do not correspond to EU standards (e.g. re-education and death penalty persist, freedom of expression, religion and association are still not fully assured²). One of the main instruments of the EU to complete the EU-China dialogue is the intensification of co-operation projects.

5 Effectiveness of China's implementation of a co-operation agreement

"Based on Europol evaluation, including the advice of the MS and the Commission, the following matters should be considered:

- *Does the country have appropriate and efficient law enforcement structures?*
- *Can the country fulfil the obligations mentioned in the potential agreement (essential elements of data protection requirements, confidentiality rules, the human and fundamental rights issues)?*
- *What is the quality level of the actual relevant information and intelligence coming from the country?"*

The law enforcement structures in China are currently in a process of reform. Improvements concerning the establishment of the rule of law and the development of the legal system are obvious. But in spite of the fact that a developing legal framework in China exists, it is currently not used in the proper way mainly because the understanding of legal procedures in China is a predominantly instrumental one, which means laws are mainly used to internally speed up the economic modernisation of the country.

Supporting China's transition to an open society based upon the rule of law is an essential element of the EU-China policy. An overall change of the political system cannot be predicted for the coming years.

¹ See: Commission Policy Paper for Transmission to the Council and the European Parliament. A maturing partnership – shared interests and challenges in EU-China relations, Brussels, 10/09/03, COM (2003) 533 fin., p. 9ff.

² See below, p. 12.

6 Europol Resources

- *Does the present workload allow for a new agreement?*
- *What are the Budget, IT and Human Resources capacities of Europol for the implementation of the agreement?*
- *With regard to the practical implementation (once the agreement is in force), is there a need to limit co-operation to specific OC domains?*

Europol has proposed to negotiate three new co-operation agreements (Liechtenstein, Montenegro and China). Europol will also strive at transforming the existing strategic agreements into operational ones, subject to the existence of the appropriate data protection framework in the interested countries. Europol believes that it is able to do the additional work with its current resources.

The overall financial implications (i.e. safe communication line) should be included in Europol's future financial planning.

7 Conclusion

Taken in to account the strategic importance of China, being the most populous countries in the world and Europe's second largest trading partner, and based upon the information laid out above, the Europol Management Board is invited to consider advising the Council to add China to the Council's list of countries with which Europol may start negotiations in order to conclude a strategic co-operation agreement, followed – if all conditions are met – by an operational co-operation agreement with China.