



842 WP2
056

**COUNCIL OF
THE EUROPEAN UNION**

**Brussels, 8 May 2000 (12.05)
(OR. fr)**

8325/00

LIMITE

EUROPOL 11

NOTE

from :	French delegation
to :	Europol Working Party
No. prev. doc. :	7316/00 EUROPOL 4, 7370/00 EUROPOL 6
Subject :	Inventory of practical arrangements for Europol support for joint investigative teams

On the basis of the previous discussions and the guidelines adopted by the Working Party at its meeting on 17 February 2000, the French delegation wishes to communicate the information it has gathered on Europol support for joint investigative teams.

This pragmatic approach is intended to allow Europol to play the support role provided for in Article 30(2)(a) of the Treaty on European Union within the current framework of the Europol Convention, as soon as this is made possible by the actual establishment of joint investigative teams.

In accordance with Recommendation 43 of the Tampere summit, Europol's support capacity may initially be deployed in combating terrorism and the traffic in drugs and human beings.

I. SURVEY OF EUROPOL SUPPORT ARRANGEMENTS

- **placing Europol's knowledge of the criminal world at the disposal of joint teams:**
via an officer, Europol could place its knowledge of the criminal world at the disposal of joint teams pursuant to Article 3(3)(4) of the Convention, which allows Europol to assist the Member States by providing advice on investigative procedures (also taking into account Europol's linguistic capabilities).
- **Europol support in coordinating operations undertaken within the framework of a joint team:**

Europol already fulfils this coordination support role through its operational support structures, notably in the area of controlled deliveries. This support function is based on Articles 3(1)(1) (facilitation of the exchange of information between the Member States) and 3(3)(4) (advice on investigative procedures) of the Europol Convention. Even in the case of joint teams, this possibility will therefore not constitute a new function for Europol.

- **technical Europol support within the framework of a joint team:**

The Europol officer could advise Member States on appropriate techniques for use in investigations with a cross-border dimension (for example, the type of tailing equipment to be used) under Article 3(3)(2) (organisation and equipment of authorities) and Article 3(3)(4) of the Convention (technical and forensic police methods and investigative procedures).

The other option, which is already used, involves Europol providing material support to joint teams in their investigations.

– **Europol support in the area of analysis:**

either an analysis file on the offences may already exist. In this case, in order to comply with the provisions of Article 10 of the Convention, the format of the analysis group should be the same as that of the joint team (the same Member States). At the very least, the analysis group within the meaning of Article 10 above would give its agreement to the Europol analyst assisting the joint team.

or the members of the joint team may call on a Europol analyst in order to obtain an authorised opinion on whether an analysis file should be opened at Europol.

The Convention's very strict provisions on the administration of the analysis file, notwithstanding the fact that any support from Europol would be on the basis of Article 3(1)(1) (facilitation of the exchange of information between the Member States), imply scrupulous compliance with the following procedures:

Any analysis data resulting from the work of the joint team must be forwarded to Europol via the national unit as provided for under Article 4 of the Convention;

In the opposite direction (Europol to the joint team), data from an analysis file would be retrieved in accordance with the procedure provided for under Article 10(8) of the Convention (prior consultation of the analysis group).

Any communication to the joint team of data from the general information system should not encounter any objection of principle as this will take place within the context of Article 9 of the Europol Convention, which allows the national unit concerned to access such data on a real-time basis. In this specific instance, information from a Europol officer would have no real added value.

II. ARRANGEMENTS CONCERNING REQUESTS TO EUROPOL FOR SUPPORT

In order to guarantee the necessary transparency and compliance with Article 4 of the Convention, it would be desirable, firstly, for all requests to Europol for support to be made via a national unit and secondly, for a progress report drawn up by the Europol officer at the end of his support mission to be sent to both the national units concerned and to the Director of Europol.

It would also be desirable for the Director of Europol, pursuant to his responsibilities as specified in Article 29 of the Convention, to decide on what action should be taken on any request for support, and to give the reasons for any refusal.

III. LIABILITY AND PROTECTION OF EUROPOL OFFICERS WORKING IN A JOINT TEAM

As regards the rules on liability governing the actions of the Europol officer, there should be a presumption that the Convention is applicable, under the Member State concerned proves that the officer's action is not connected with the Europol Convention or his mandate.

However, thought should be given to a mechanism for consultation between the head of the joint team and the Director of Europol for the purpose of settling problems or disputes which may arise in connection with the support operation (for example, differing interpretations of the mandate of the Europol officer). In order to limit this risk, immediately Europol is requested to provide support for a joint team, the head of the team and the Director should consult in order to define the role and the task(s) of Europol officers.

Protection of Europol officers on the territory of a Member State would be governed by Europol's Protocol on Privileges and Immunities.