



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 8 July 2005

11037/05

LIMITE

**CRIMORG 67
ENFOPOL 88**

OUTCOME OF PROCEEDINGS

of: Article 36 Committee

on: 7 and 8 July 2005

No. prev. doc. : 8255/05 CRIMORG 37 ENFOPOL 44 + REV 1 + REV 2

Subject : Item 7 of the agenda:
Joint Investigation Teams - Proposal for designation of national experts

Following the mandate given by the Article 36 Committee, the MDG on organised crime examined the Presidency proposal set out in doc 8255/1/05 REV 1 CRIMORG 37 ENFOPOL 44 at its meeting on 14 June 2005.

The discussion focussed on ways to implement Section 2.3 of the Hague Programme and its commitment that “with a view to encouraging the use of such [Joint Investigation] teams and exchanging experiences on best practice, each Member State should designate a national expert.”

Most delegations agreed on the need to avoid the setting up of a cumbersome and bureaucratic network and supported a more flexible and pragmatic approach.

Delegations underlined that the role of national experts on JITs should be to facilitate the use of joint investigation teams by disseminating information about the legal basis and the options available to practitioners. Additionally they should make the exchange of experiences on best practices possible. Some delegations thought that national experts should not have to be involved in operational tasks related to JITs. Some delegations thought that a generic organisation rather than a named person should be designated as a national contact point or expert, depending on the national arrangements within Member States.

Following discussions in the Article 36 Committee on 7 and 8 July 2005, the following principles were accepted:

- **All Member States agree on the need to make better use of and share experience concerning Joint Investigation Teams.**
- **In line with the commitment in the Hague Programme, all Member States should designate national experts.**
- **National experts may either be a person or a representative of a generic organisation (a contact point, perhaps representing a law enforcement and/or a judicial authority e.g. *Head of International Division, the National Criminal Intelligence Service*) depending on national law and the circumstances and national arrangements in each Member State.**
- **National experts will be responsible for liaising with other persons and organisations within that Member State so as to provide information and advice from that Member State on the establishment of Joint Investigation Teams, including the legal framework nationally for the establishment of such teams. National experts should be in a position to share best practice with one another on Joint Investigation Teams.**
- **National experts do not necessarily need to have operational experience of a Joint Investigation Team nor do they need to be directly involved in the establishment or running of a Joint Investigation Team.**
- **National experts should not form a new formal network or overly bureaucratic structure but should be able to meet collectively or in smaller groups if this would facilitate the sharing of best practice and experience. These meetings should be organised in a flexible way, perhaps in the margins of a working group or at Eurojust or Europol, as appropriate.**

- **Eurojust has agreed to host a meeting on Joint Investigation Teams in the Autumn of 2005. National experts from each Member State should be invited to send appropriate representatives to that meeting (or to attend themselves) depending on the content and agenda for that meeting.**
- **With this in mind, Member States are invited to designate national experts and to send the details of those national experts to the General Secretariat of the Council (paola.fiore@consilium.eu.int) by no later than 1 September 2005.**
- **In addition, the Presidency asked for information on the establishment of Joint Investigation Teams in Member States to be sent to the General Secretariat of the Council by the same date.**

Background

On several occasions, the European Union has taken initiatives in the area of joint investigation teams in order to promote their use.

The Tampere conclusions have called for joint investigation teams, according to the Treaty provisions, to be set up without delay as a first step in the fight against trafficking in human beings and drugs as well as in combating terrorism.

The Hague Programme on strengthening freedom, security and justice in the European Union¹, with a view to enhancing police and judicial cooperation, has encouraged the use of joint investigation teams and has foreseen that each Member State should designate a national expert in order to exchange experiences on best practices.

¹ OJ C 53, 03.03.2005, p. 1.

According to the information in the possession of the General Secretariat as at 30 May 2005¹, 21 Member States reported to the Council about the implementation of the Framework Decision on joint investigation teams of 13 June 2002². The Commission has also produced a Report on national measures taken to comply with the Council Framework Decision on JITs³.

On 8 May 2003, in order to facilitate the setting up of joint investigation teams the Council adopted a Recommendation on a model agreement⁴, intended as a comprehensive but flexible model so as to be adaptable to particular circumstances of each case.

The Council Declaration on combating terrorism on 25 March 2004⁵ called on Member States to ensure that Europol and Eurojust representatives should be associated with the work of joint investigation teams as far as possible. In this regard, it has to be pointed out that until December 2004 only 13 Member States have reported completion of ratification of the 2002 Protocol amending the Europol Convention⁶ in order to enable Europol officials to take part in joint investigation teams.

Experience within the Member States regarding the use of joint investigation teams, however, is limited. It seems that only three joint investigation teams -one between the UK and the Netherlands and two between France and Spain- have been established according to the Framework Decision model. These concerned two drug trafficking cases and an investigation on terrorism. France and Spain are currently examining the setting up of two further teams.

¹ As set out in doc. 9809/1/05 REV 1 ADD 2, update of the EU Plan of Action on Combating Terrorism as to 30 May 2005.

² Framework Decision 2002/465/JHA; OJ L 162, 20.06.2002, p. 1.

³ Doc. 5448/05 COPEN 10

⁴ OJ C 121, 23.05.03, p. 1.

⁵ Doc. 7906/04 JAI 100 ECOFIN 107 TRANS 145 RELEX 123 ECO 73 PESC 208 COTER 20 COSDP 142.

⁶ OJ C 312, 16.12.2002, p. 1.

Designation of national experts on joint investigation teams

Bearing in mind that national experts should offer an added value for practitioners, it is envisaged that they should be established as definite contact points who can assist with giving advice and assistance in the setting up of Joint Investigation Teams. National experts should not duplicate the tasks of existing tools or bodies but should complement them. They do not necessarily have to be involved in issues related to operational activities.

In the Presidency's proposal, the concept of a network of national experts was intended to refer to a number of experts working in connection with the aim of exchanging views and best practices so as to have a comprehensive overview. The Presidency does not intend to establish a new or formal network. The experts can meet and contact each other as they need to and do not need a formal network structure for this form of contact to take place.

Tasks of the national experts

In line with the basic principles outlined earlier, national experts should:

- Facilitate the setting up of joint investigation teams by disseminating information about the legal framework and the possibilities of setting up JITs (conferences, training sessions, seminars, etc.).
- Be national contact points which competent national authorities and authorities from other Member States dealing with JITs could ask for expertise and information about the national legislative framework concerning Joint Investigation Teams, information about competent authorities to contact, overcoming linguistic problems etc. As a first step, national experts could be asked to participate in the joint project started by Eurojust and Europol regarding the issuing of a manual containing a collection of those national legislations which implemented the Framework Decision on JITs.

- Be able to collect and receive information about best practices as well as on obstacles and problems encountered in the setting up and organization of the JIT. In this framework, they should identify any possible problems and best practice arising from the agreements made by the Member States which have set up the above mentioned joint investigation teams or plan to establish them. The analysis, which could also usefully draw on the model agreement annexed to the Council Recommendation of 8 May 2003, may be shared with Eurojust and Europol.
- Be in a position to have close contact with Eurojust and Europol when dealing with JITs with a view to facilitating the association of those bodies to JITs and to providing and exchanging expertise about the national legal framework and best practices. In this regard, the proposal from Eurojust to host a meeting in the Autumn of 2005 to which the experts may be invited is welcomed in order to start working on the project of a manual on JITs and to analyse issues and difficulties related to the setting up of the JITs. If appropriate, this meeting could be held periodically. The Council and the Commission will be informed about the outcome of this and any other similar meetings like it that may be organised as the need arises.
- Should work closely with the EJM as much as this is appropriate in order to improve the tools of EJM in relation to Joint Investigation Teams (e.g. Fiches Belges).

Choice of appropriate national experts

The main objective of designating national experts on JITs should be to facilitate the work of practitioners in the Member States, in association with Europol and Eurojust in their supportive role to JITs. It is therefore of crucial significance that the choice of national experts is the most appropriate in order to ensure that they complement and collaborate with all concerned parties. The national expert may either be a person or a representative of a generic organisation (a contact point, perhaps representing a law enforcement or judicial authority, e.g. *Head of International Division, the National Criminal Intelligence Service*) depending on the circumstances and national arrangements in each Member State.