

**Informal Meeting
of the Justice and Home Affairs Ministers**

Luxembourg, January 27-29, 2005

**STRENGTHENING SECURITY – Structuring operational police and judicial
cooperation at European Union level**

In its final report to the Convention¹, Working Group X "Freedom, Security and Justice" broadly acknowledged that "*current operational collaboration lacks efficiency, transparency and responsibility*". It also recognised that "*to improve confidence and efficiency, the Union's current work on coordination and operational collaboration could be better organised*". It therefore proposed that "*a more efficient structure for the coordination of operational cooperation at high technical level be created within the Council*", while asking the question "*how best to associate the Chiefs of Police Task Force with this work*".

Article III-261 of the new Constitutional Treaty provides for the setting up of a standing committee "*in order to ensure that operational cooperation on internal security is promoted and strengthened within the Union*". The committee would also have the task of facilitating "*coordination of the action of Member States' competent authorities*". The need to improve operational coordination to strengthen security in Europe has thus been clearly recognised.

Under the Hague Programme, adopted by the European Council on 5 November 2004, the Council is invited "*to prepare for the setting up of the Committee on Internal Security envisaged in Article III-261 of the Constitutional Treaty [...] with a view to its establishment as soon as possible after the Constitutional Treaty has entered into force*".

¹ CONV 426/02 WG X 14, 2.12.2002.

However, in order to define the area of activity, functions, competences and composition of the standing committee, the Council first needs to consider what it expects from the new structure, how the committee will fit into the overall concept of European security and what its relations with the other leading players at European level, including Europol, Eurojust, the European Borders Agency and OLAF, will be.

The strengthening of internal European security also requires a significant improvement in information exchange, which should be achieved by introducing the principle of availability.

If the new operational structure is to be ready when the new Constitutional Treaty comes into force or by 1 January 2008 at the latest, the Council should start to define its level of operational ambition now to give the concept of internal security within a common area of freedom, security and justice a genuinely European dimension. The new operational structure should also take into account the solidarity clause in Article I-43 of the Constitutional Treaty, particularly in matters relating to the prevention of terrorism and the management of the consequences of a terrorist attack.

To strengthen security at European level, Justice and Home Affairs Ministers are invited to express their views on the level of operational ambition which the European Union should be aiming for by 1 January 2008 on the basis of an integral concept covering police and judicial aspects of operational cooperation.

1. What is the position as regards the committee provided for in Article III-261 of the new Constitutional Treaty?

The main aim of the committee should be to establish the unity and consistency necessary to deal with all matters relating to internal security at EU level. It should have two functional responsibilities: firstly to prepare European internal security policy, identifying appropriate and necessary changes to the legislative framework, and secondly to monitor cooperation and operational coordination in police and criminal justice matters.

The exact nature of the committee cannot be discerned by reading Article III-261. If it were a technical committee with an exclusively operational brief, which forum would then prepare the "*strategic guidelines for legislative and operational planning within the area of freedom, security and justice*" provided for in Article III-258 of the new Treaty and provide the necessary coordination and articulation between legislative and operational aspects? Alternatively, as a standing body established under the Constitution itself, could or should the committee envisaged in Article III-261 not play a coordinating role, supported by a purely operational structure but clearly separate from any given group of legislative working parties? The Luxembourg Presidency believes both readings of Article III-261 are possible and that neither position compromises the overall equilibrium written into the Constitutional Treaty. The Presidency therefore wishes to initiate a debate by putting these questions to the ministers responsible for internal security matters in the belief that clarification at the preparatory stage will save a lengthy interpretation debate on the exact nature of the responsibilities of the Article III-261 committee when it is set up.

Until the Article III-261 Committee is set up, the Council is invited under the Hague Programme to organise a meeting every six months between the chairperson of the Strategic Committee on Immigration, Frontiers and Asylum (SCIFA), the chairperson of the Article 36 Committee and representatives of the Commission, Europol, Eurojust, the European Borders Agency, the Police Chiefs Task Force and SITCEN.

Justice and Home Affairs Ministers are therefore asked to express their views on the role of the future committee provided for by Article III-261 of the new Constitutional Treaty and its place within an integrated concept of internal European security.

2. How should police cooperation in border regions within the Union be developed?

Since the Schengen Convention was signed in 1990, all the Member States of the European Union have made a significant effort in the area of police cooperation in border regions. Numerous bilateral agreements have introduced new forms of cooperation enabling, in particular, police officers from one Member State to act in the territory of another Member State.



However, this kind of bilateral agreement varies from region to region and the diverse nature of such agreements means that certain types of cross-border operation are not possible everywhere in Europe.

In a common area of security without internal borders, maximum efficiency in police action needs to be achieved. The aim should therefore be to have the same level of police cross-border cooperation throughout the territory of the European Union and in border regions in particular. To achieve this objective, the Luxembourg Presidency proposes systematically drawing up model agreements at Union level to provide a legal framework for police cooperation between Member States at bilateral level.

Justice and Home Affairs Ministers are therefore invited to state whether they support the idea of systematically drawing up common model agreements at Union level as a means of fostering police cooperation at bilateral level, particularly in border areas.

3. What is the future vision for Europol and Eurojust?

There should be no overlapping of responsibilities or tasks between the Article III-261 committee and Europol and Eurojust. Acting within their respective spheres of competence, the three bodies should be complementary structures enabling the EU to achieve its internal security objectives.

To maximise the strategic role of the Article III-261 committee, Member States also need to reinforce their strategic vision for Europol and Eurojust, ensuring complementarity with that for their own law enforcement services at national level. Interaction, homogeneity and complementarity of the action taken could thus be significantly enhanced. The Director of Europol and the president of Eurojust could also be full members of the Article III-261 committee.

At European level, Europol will continue to be the exclusive player in relation to police investigations in the areas, on the terms and in accordance with the responsibilities established in its legal framework. However, Article III-276 of the Constitutional Treaty provides for the



replacement of the present Europol Convention by European laws, meaning that Europol's legal framework is set to change, in which case there are two possible scenarios.

The Council may decide to include in the future European law only the current provisions of the Europol Convention as amended by its protocols, without extending Europol's responsibilities and tasks, thereby confining Europol's action to its present framework until 2010 at least.

Alternatively, the Council could take advantage of the momentum to redefine needs and expectations in relation to Europol and draw up a new legal framework to significantly develop the European Police Office.

The Council has noted on various occasions that at present Europol is prevented by its legal framework from providing sufficient operational support, particularly in the context of action by the Police Chiefs Task Force. If the ministers responsible for internal security matters favour the second approach (extending Europol's powers), the Council should begin to assess needs now with a view to formulating new objectives for Europol, subject to all the provisions of Article III-276 of the Constitutional Treaty and taking into account Europol's role within an overall concept of European internal security. The Luxembourg Presidency considers that these discussions should start in 2005 so that the European law on Europol can be approved by 1 January 2008.

The same questions apply to Eurojust: does the Council wish to start planning the next stage in the development of Eurojust now - in parallel with the development of Europol - with a view to preparing "*the European law on Eurojust, provided for in Article III-273 of the Constitutional Treaty*" by 1 January 2008 at the latest?

With a view to preparing the European laws provided for in Articles III-276 and III-273 of the Constitutional Treaty, Justice and Home Affairs Ministers are invited to reflect on the development of Europol and Eurojust in the context of the implementation of an integrated concept of European internal security and to indicate their preferred approach with regard to the preparation of the related future European laws.



4. What should the format be for exchange of information under the principle of availability?

Article III-275 of the Constitutional Treaty identifies "*the collection, storage, processing, analysis and exchange of relevant information*" as one of the measures required to develop police cooperation between the competent authorities of Member States.

In a communication published on 2 June 2004, the Commission reviewed in general the problem of information exchange and identified a number of gaps and obstacles. At the Council, discussions are being held on a Swedish initiative to simplify exchange of information and intelligence between law enforcement authorities.

The Hague Programme introduced an innovative approach at European level by establishing the "principle of availability" as the common standard for information sharing and exchange. The Commission has been invited to submit suitable proposals by the end of 2005 with a view to having the new information exchange structure in place by 1 January 2008.

The Luxembourg Presidency considers that a policy debate on the principles and conditions adopted by the European Council, at the level of ministers responsible for internal security matters, is required so that there can be an exchange of views:

- to define more clearly the principle of availability and identify its limits;
- to determine the authorities and services (police, customs, judicial, other) that should be included in the new information exchange structure;
- to establish if and how Europol and Eurojust can be integrated into the structure and/or if the future SIS II could provide the basic architecture;
- to examine how to define the purposes for which transmitted information could be used;
- to consider the means of and procedures for protecting data and privacy;
- and finally to decide whether "direct cross-border access" is an objective which the Council ultimately wishes to achieve.

Member States' comments on these matters should help the Council to reach a common understanding to implement the mechanism between now and 2008.

Accordingly, Justice and Home Affairs Ministers are invited to express their views in relation to the implementation of a mechanism for information sharing and exchange on the basis of the availability principle.

