

**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 23 may 2005

9156/05

LIMITE

**JAI 178
ECOFIN 155
TRANS 98
RELEX 248
ECO 58
PESC 420
COTER 30
COSDP 319
PROCIV 69
ENER 73
ATO 54**

NOTE

from : Europol
to: Council
Subject : EU Plan of Action on Combating Terrorism - Update

EU Plan of Action on Combating Terrorism – Update

Contribution from Europol

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1. BRIEF SUMMARY ON COUNTER TERRORISM EFFORTS AT EUROPOL

1.1. Areas of activities – Counter Terrorism Unit

At Europol, the Counter Terrorism Unit as part of the Serious Crime Department focuses on the following mandated areas:

- Terrorism
- Illicit trafficking in nuclear and radioactive substances
- Illicit trafficking in arms, ammunition and explosives
- Racism and xenophobia

All activities in the above mentioned mandated areas are clustered into the following support actions for the Member States:

- Operational and strategic analysis¹
- Support to operational investigations in the Member States
- Training (in coordination with CEPOL)

1.2. Counter Terrorism Task Force – CTTF

As an integrated element within the Counter Terrorism Unit at Europol, the Counter Terrorism Task Force (CTTF) has been established in the aftermaths of the terrorist attacks that took place in Madrid on 11 March 2004, thus meeting the instructions given by the “Declaration on Terrorism” of the European Council of 25 March 2004².

In line with the business need outlined by the EU Member States, the CTTF currently runs 12 strategic (analysis) projects (overview – Annex 2).

¹ Including threat assessments and reports such as the “Non confidential report on the terrorist activity in the European Union from October 2003 to October 2004 – Terrorist Situation and Trends Report – TE-SAT”, Council Secretariat documentation reference n° 7237/05 EUROPOL 23 + COR1 – presented to the Article 36 Committee – CATS on 4 April 2005; Counter terrorism legislations overview, periodic open sources overviews on current developments etc. Detailed information can be made available if needed.

² Council Secretariat documentation reference n° 7906/04 JAI 100

1.3. Staffing situation: CTTF and Counter Terrorism Unit

In line with the business planning for Europol which is endorsed in the format of the Europol Work Programme and Budget by the Council on a yearly basis, there are currently 15 permanent staff members in the Counter Terrorism Unit at Europol.

In addition to these 15 staff members of the Counter Terrorism Unit, there are 22 analysis staff from the Analysis Unit of the Serious Crime Department allocated to counter terrorism related activities in order to manage the two Analysis Work Files (AWFs) which are currently established in line with the respective provisions of the Europol Convention at Europol for conducting operational analysis in the area of counter terrorism. These two AWFs are: Analysis Work File “Islamic Terrorism” and Analysis Work File “Dolphin”. These 22 analysis staff members include 10 of the additional 18 analysis staff members that were granted by the “Supplementary and amending budget 2004” concluded by the Council on 28 June 2004³ to reinforce the counter terrorism analysis work. Once the remaining 8 posts (out of 18) have been recruited as planned, there will be 30 analysis staff members engaged in the counter terrorism analysis work. Given a total work force of currently 80 analysis posts at Europol (including 6 seconded analysts from EU Member States who are not Europol staff officers), more than one third of the analysis resources will be allocated to the counter terrorism analysis work. This underlines the priority given by Europol to the area of counter terrorism in order to meet the political guidelines of the “Declaration on Terrorism” of the EU Council.

With regard to support staff from EU Member States:

At present, there are 10 seconded experts (two of them are working part-time with 50%) who work directly in the CTTF. Two of these ten are from (security) intelligence services.

³ Council Secretariat documentation reference n° 9764/04 EUROPOL 31 LIMITE

In addition to these ten officers, there are 4 additional officers at the Liaison Bureaux of EU Member States at Europol and 9 experts within the Europol National Units (ENUs). These 13 staff members are designated to support the CTTF in case additional resources are required, they do not work as a direct support to CTFF at the moment.

A detailed overview of the staff contribution from EU Member States is attached as Annex 3 to this document.

The staff members seconded from EU Member States and Europol's own resources allow for suitable management of the present CTTF (strategic) project related activities. It is estimated that once the 8 outstanding analysis posts have been recruited, current analysis backlogs in the area of operational counter terrorism analysis can be removed.

1.4. State of play regarding ongoing investigations/analysis work

1.4.1. Analysis Work File “Islamic Terrorism”

The Analysis Work File (AWF) “Islamic Terrorism” was established in 1999 to support Member States in their ongoing live operations/investigations with regard to actions linked to the phenomenon reported as Islamic terrorist activities. Based on the assessment concerning the quantitative and qualitative contributions from EU Member States, it can be concluded that the AWF is used by the Member States to support ongoing operations on a significantly increasing basis since mid of 2002. Currently, this AWF actively supports 21 ‘live’ investigations within several Member States. Whilst the majority of contributions to the AWF have been made available to Europol after investigations so far, there are now instances where assistance from Europol is sought by Member States at the very early stages of terrorism enquiries:

- Two countries have started to send data even in the pre-operation phase (where investigative and especially judicial measures are prepared) on a regular basis but also supply analysis reports and/or structural data to the AWF (e.g. in relation to the financing of terrorism and usage of falsified documents).

- Two countries have decided to regularly check the fingerprints of newly arrested suspects with the other Member States in order to find aliases used or establish the real identity of a suspect, i.e. that the unique legal framework of the AWF is exploited at EU level to dispatch fingerprint material to Member States: When a suspect has been located, Member States send the respective fingerprints images of the suspects to the analysis group “Islamic Terrorism” where these are stored accordingly. Based on requests from Member States the fingerprint material is then sent to other Member States where for instance a similar name or alias has occurred and where also respective fingerprint images are available. Based on the outcome of the checks carried out in the Member States, the staff members assigned to the Analysis Work File “Islamic Terrorism” are subsequently in the position to inform the concerned Member States about the results of the checks with a unified report.
- As a conclusion to the, unknown links between Member States’ investigations have been discovered by central analysis work at European level, thereby offering new lines of investigation. This trend might increase when Europol is supplied with more live operational data.

The work file currently has around 108000 entities of which the more significant include: 54000 Communication entities, 25000 persons, 8000 locations and 2040 financial account numbers.

1.4.2. Analysis Work File “Dolphin”

The second terrorist related Analysis Work File “Dolphin” was established in 2003 and seeks to identify activities of terrorist groups (not covered by the AWF “Islamic Terrorism” – see above) listed by the Council of the European Union and by the Working Group on Terrorism of the Council Secretariat as posing a serious threat to the security of the European Union and the Member States.

AWF “Dolphin” currently has 2380 entities with the number of total link records standing at 6286.

1.4.3. Evaluation mechanism

Each AWF at Europol has an organisational structure that includes an Operational Steering Group (OSG). AWF activities are monitored and scored by the OSG in order to assess the current viability and priorities of individual Analysis Work Files. A colour coding system is used to mark the status of the Analysis Work Files (green = overall sufficient progress, yellow = developments need attention of involved parties and red = file is not progressing and is due to closure).

The OSG assessment of the AWF “Islamic Terrorism” is “green”. The recent OSG status judgment concerning AWF Dolphin is “yellow”.

The colour coding mechanism has also been applied to the 12 projects of the CTTF (see overview Annex 2).

1.4.4. Cooperation with (security) intelligence services

Despite considerable positive developments in the area of law enforcement related operational analysis as outlined above, Europol would like to highlight the compliance of the CTTF at Europol with the mandate – assigned by the European Council of 25 March 2005⁴ – as follows:

The European Council Declaration on Combating Terrorism concluded after the tragic terrorist attacks in Madrid on 25 March states in paragraph 9 that it is the political objective to “... improve mechanisms for co-operation and the promotion of effective systematic collaboration between police, security and intelligence services...”

Furthermore, it is delineated in the Council Declaration that the development between Europol and the (security) intelligence services will be taken forward, meaning that it is the aim to bridge the space that is still existing between the law enforcement authorities and the (security) intelligence services.

⁴ See footnote 2.

A concrete signal for this intention can be seen in the outcome of the European Council of 25 March 2004 itself, because the European Council Declaration comprises the decision to reactivate the CTTF at Europol⁵.

Bearing in mind the fact that the ‘first’ CTTF, established after the terrorist attacks in September 2001, had the mandate to combine and process terrorism related intelligence (from law enforcement authorities including security intelligence services) at Europol in order to carry out operational and strategic analysis (also threat assessments), it can be interpreted that the European Council Declaration of 25 March 2004 underpins the strategic goal to bring the law enforcement and the (security) intelligence service side closer together within the framework of Europol.

Since Europol is the only European body providing a thorough legal basis for sharing (operational) information and intelligence whilst safeguarding source protection needs according to the owner of the respective data, Europol understood that, within the framework of the Analysis Work File on “Islamic Terrorism”, it should act as the central entity for especially operational criminal intelligence analysis (in particular for the prevention of terrorism) and operational/ investigative support.

Given the fact that there are currently only two seconded experts to the CTTF at Europol with a (security) intelligence service profile, Europol does not expect structured contributions from the side of the (security) intelligence service environment. To Europol’s understanding, this does not coincide with the mandate ascribed to the CTTF by the European Council Declaration on Combating Terrorism of 25 March 2005; It was

⁵ Following the conclusions of the Justice and Home Affairs (JHA) Council held on 20 September 2001, the Counter Terrorism Task Force (CTTF) was established as a response to the 11 September 2001 terrorist attacks in the USA. The Extraordinary European Council Meeting held on 21 September 2001 affirmed this idea (2001 Action Plan on Terrorism). Following the evaluation of the CTTF presented to the 28th Management Board Meeting on 29-30 October 2002 (Europol Management Board Secretariat documentation reference: 184.2002 – October 2002), the Justice and Home Affairs Council held on 28-29 November 2002 endorsed the proposal that the CTTF should be finalized and that the remaining tasks should be transferred into the permanent organizational structure of Europol (Europol 86 REV1 – 2002, Europol 94 – 2002).

suggested by Europol to the Europol Management Board held on 27/28 October 2004 that the European Council should be notified about this development. The Chairman of the Europol Management took this proposal forward by notifying the Chairman of the Article 36 Committee (CATS) on 16 November 2005⁶. The letter of the Chairman of the Europol Management Board was subsequently tabled at the Article 36 Committee (CATS) Meeting on 22 November 2004⁷, from where – according to the information at Europol – no further information was given to the Justice and Home Affairs Council or the European Council. Europol is of the opinion that the information as described under this paragraph should be brought to the attention of the Council to allow for an informed decision on the way forward.

At EU level, Europol is developing good working relations with the Joint Situation Centre (SitCen), as the perceived central EU entity for compiling strategic (security) intelligence service information, in line with the external strategy of Europol⁸ that was endorsed at the CATS Meeting on 07-08 October 2004. Europol received a delegation of SitCen on 15 April 2005 to mutually inform both parties about the respective business planning. Based on the discussions held at the Europol Management Board Meeting in December 2004, Europol will strive to reach a strategic cooperation agreement with SitCen. At present, proposals for such agreement have been exchanged and scrutinised, while a conclusion of discussion is foreseen towards the end of the Luxemburg Presidency.

2. COUNCIL DECISION ON THE EXCHANGE OF INFORMATION

2.1. General assessment

Europol supports the objective of the “Draft Framework Decision on simplifying the exchange of information and intelligence between law enforcement authorities of the member States of the European Union, in particular as regards serious offences including terrorist acts”⁹ to further enhance the availability of information and intelligence for the competent authorities.

⁶ Council Secretariat documentation reference n° 14846/04 EUROPOL 56 ENFOPOL 172 LIMITE

⁷ Council Secretariat documentation reference n° 14762/04 OJ CATS 10 COMIX 695

⁸ Council Secretariat documentation reference file n° 12660/04 EUROPOL 44

⁹ Council Secretariat documentation reference n° 6888/1/05 CRIMORG 20 REV1 LIMITE

The personal data that will be transmitted to Europol in order to apply the afore mentioned legal instrument will have to be processed as part of the information referring to Analysis Work Files or the information exchange between the Member States through their Liaison Bureaux at Europol and with Europol itself, in line with the Europol Convention and the concerned regulations. With regard to the Information System of Europol which now has to be implemented by the EU Member States, Europol hopes that the competent authorities will exploit the opportunities given by the Europol Convention to make relevant data available to the law enforcement authorities across the EU (Article 8 of the Europol Convention outlines the content of the information system). The Framework Decision therefore might help stimulate Member States to input respective data in the Information System.

2.2. Specific considerations

2.2.1. *Background*

From Europol's point of view, the initiative of the EU Commission for an "EU Information/Intelligence Policy"¹⁰ – which was launched at the same time when the discussion on the afore mentioned Framework Decision was initiated – constitutes the prime document whereas the objectives contained in the Framework Decision provide complementary ideas that should be interlinked with the initiative for an "EU Information/Intelligence Policy".

The "principle of availability", also referred to as the "principle/right of equivalent access to data between law enforcement authorities", was first mentioned in the initiative of the EU Commission for an "EU Information/Intelligence Policy" in June 2004.

Europol was asked by the EU Presidency delegation of the Europol Management Board to submit its views towards the two mentioned initiatives.

¹⁰ Council Secretariat documentation reference n° 10745/04 ENFOPOL 77 + COR 1

Further to the ideas presented to the Europol Management Board Meeting on 15–16 September 2004 and in agreement with the Chairman of the Europol Management Board, Europol provided the Council Secretariat, Directorate General H (Justice and Home Affairs – Direction H2) and the Commission, Directorate General Justice and Home Affairs (Directorate D) on 1 December 2004 with a dossier outlining the position of Europol and concrete suggestions on the way forward.¹¹

Europol supported the idea of the EU Commission to draw a holistic concept for interaction between the relevant authorities in the field of Justice and Home Affairs at EU level “EU Information/Intelligence Policy”.

With reference to the suggested use of several communication channels for the exchange of information and intelligence¹², Europol underlined that this idea would enable Europol to have a broad picture of information exchange at EU level. However, it was outlined that it would also reveal the weakness in transmitting and sharing information with regard to the question as to why such information was not communicated to Europol directly if the offence or criminal activity already fell within the Europol mandate. Europol was and is therefore of the opinion that this initiative should await and be in line with the development of the concept for an information/intelligence model in the Justice and Home Affairs area. From Europol’s point of view, there is a clear risk of a lack of effective co-ordination if the Schengen, the Europol and other co-operation frameworks will be responsible for the exchange and processing of information and intelligence in the EU at the same time without a concept when and which cooperation channel should be utilised. As a consequence, Europol supposes that within the development of an information/intelligence model (EU wide information strategy) a single channel policy regime as regards processing of information requests should be established.¹³ This would help to avoid information “shopping” and duplication of efforts.

¹¹ Letter from Europol to the Council Secretariat, Directorate General H (Justice and Home Affairs – H2), dated 1 December 2004, Europol documentation reference n° 3710–178 (100346v2); Letter from Europol to the Commission, Directorate General Justice and Home Affairs (Directorate D), Europol documentation reference n° 3710–177 (100345v2)

¹² Article 7 of the “Draft Framework Decision on simplifying the exchange of information and intelligence between law enforcement authorities of the member States of the European Union, in particular as regards serious offences including terrorist acts”, see also footnote 8

¹³ Once one co-operation channel is chosen, the authority in questions should stick to this channel. A change should only take place by informing all concerned partners thereof.

2.2.2. *Recent developments*

The European Council of 4/5 November 2004 has adopted a new multi-annual programme for the next five years (“The Hague Programme”)¹⁴ which describes new strategic guidelines for Justice and Home Affairs matters (as a follow-up to the Tampere European Council of 1999) and takes the idea of the EU Commission forward by stating that with effect from 1 January 2008 the exchange of law-enforcement information at EU and national level should be governed by the principle of availability.

Europol welcomes the objective to improve the effective exchange of data between law enforcement authorities – both on national and EU level.

Furthermore, Europol considers the “principle of availability” to be an important strategic parameter which should be part of an EU wide “Information/Intelligence Policy” setting out a strategy programme how the responsibilities between the EU authorities being active in the Justice and Home Affairs domain should be defined. Depending on this concept, the (existing) IT systems may be restructured or even newly designed to meet the underlying business need.

Europol has reiterated its proposal (further to the documentation as submitted to the Council Secretariat and the Commission on 1 December 2004) at the Article 36 Committee (CATS) Meeting of the Council on 18 January 2005, describing that a horizontal concept to define the roles and responsibilities of the concerned authorities present in the Justice and Home Affairs environment should be drawn up (by either the Commission or the Council Secretariat). Europol has highlighted that this concept would have to address specially the cooperation among agencies like Eurojust, the (future) Border Management Agency, the Joint Situation Centre – SitCen, OLAF and Europol.

It was explained to the Article 36 Committee (CATS) that the scope and the tasks of concerned authorities at EU level have so far only been described vertically in relation to the remit of the respective agencies themselves and that the interactions between relevant authorities as well as their complementary services and products have not yet been defined in a comprehensive model.

¹⁴ Council Secretariat documentation reference n° 16054/04 JAI 559

Furthermore, Europol stated that there appears to be no legal and technical framework/interface established in the EU that ensures coherence between the development of EU Information Systems (such as the VISA Information System, the future Schengen Information System II, EURODAC and the Europol Information System). Europol outlined its belief that the EU lacks a single point of contact within the EU administration which guarantees that data models of different systems follow a coherent/unified approach (e.g. in relation biometric data standards etc.) and relationships with the private sector in contractual and procurement matters are managed effectively and efficiently.

Europol concluded its presentation to the Article 36 Committee (CATS) on 18 January 2005 with the assessment that Europol considers this future concept to be a precondition for the functioning of the Article III–261 Committee (Committee for Internal Security – COSI) as a coordinating body for security aspects in the EU once the Constitutional Treaty will have been ratified by the Member States.

From Europol's point of view, recent discussions at the Article 36 Committee (CATS) of 4 April 2005 show that the policy debate as regards the "principle of availability" continues without a discussion whether this strategic parameter should be realised as an element of an information/intelligence model (EU wide information strategy)¹⁵. There are no indications that the development of such a concept is taken forward.

The Joint Supervisory Body of Europol has outlined in its report to the Europol Management Board of 3–4 May 2005¹⁶ that there is a need for an overarching data protection policy in the EU to reflect adequate data protection standards when implementing the "principle of availability". Europol shares this view and sees the need to include it as an important element of the information/intelligence model (EU wide information strategy).

¹⁵ Council Secretariat documentation reference n° 7762/05 COPEN 66 REV1, 7641/05 CATS 20 ENFOPOL 31 REV2

¹⁶ The second activity report of the Joint Supervisory Body, November 2002 – 2004, Europol documentation reference n° DMS 113378v1

The need for this approach was also highlighted in the report of the “Ad hoc group for the study of the third pillar information systems”¹⁷ that was presented to the Article 36 Committee (CATS) on 22/23 October 2003. CATS at that time decided that this work should be further elaborated.

Europol will continue highlighting the need for setting up an EU information strategy during its forthcoming meetings with the Commission and the Council Secretariat.

The findings of the “9/11 Commission Report” which were published in July 2004 also encourage Europol to propose this idea. To the understanding of Europol, one key message is that once information is made available, there will be a need for centralised coordination/ management and leadership in order to ensure the best use is made of it.¹⁸

¹⁷ Council Secretariat documentation reference n° 13243/1/03 JAI 284 REV 1, 8857/03 JAI 118, 15030/03 CATS 71 – to the knowledge of Europol the work of the “Ad hoc group for the study of the third pillar information systems” was not taken forward.

¹⁸ National Commission of the President and the Congress on Terrorist Attacks upon the USA, “9/11 Commission Report”, paragraph 11.4, page 353; paragraph 13.3, 419–421

ANNEX 1 – OVERVIEW ON STRATEGIC PROJECTS OF CTTF

EU Member States have concluded that the CTTF at Europol should carry out its activities within the framework of the 12 different strategic project topics as set out below.

Terrorist financing

- Fundraising using local Islamic charities (Project 1) – status: green
- Cash couriers (Project 2) – status: green
- Selling of documents (Project 3) – status: red
- Selling of counterfeit goods (Project 4) – status: red (coming from yellow)
- Identification of new sources and methods of financing of Islamic terrorism (Project 5) – status: green

Recruitment

- Identification of indicators for recruited terrorist individuals and terrorist recruiters (Project 6)
 - status green (coming from yellow)

Modus Operandi

- Videos used in the framework of Islamic extremism (Project 7) – status green
- Database of Islamic extremist related communiqués (Project 8) – status yellow (coming from green)
- Use of documentation by terrorists (Project 9) – status green
- Communication methods employed by Islamic terrorist networks (Project 10) – status: yellow

Strategic and operational analysis

- Glossary of Islamic terrorist groups (Project 11) – status: green
- Handbook for law enforcement officers to assist investigations related to Islamic terrorists (Project 12) – status: green

ANNEX 2 – STAFF CONTRIBUTIONS FROM EU MEMBER STATES

A. EU Member States' seconded experts to the Counter Terrorism Unit:¹

Seconded experts to Counter Terrorism Unit:		Participation in CTTF –allocation of work force:	Remaining workforce for Counter Terrorism Unit:
Austria	1	100% FTE	
France:	1	100% FTE	-
Germany	1	-	100% FTE
Greece:	1	100% FTE	-
Italy:	2	2: 100% FTE	-
The Netherlands	2	2: 50% FTE	
Spain:	3	3: 100% FTE	-
Workforce in total	11	9 FTE	1 FTE

B. Appointment of staff within the EU Member States Liaison Bureaux at Europol to support the CTTF:

Appointed officers at Europol Liaison Bureaux:	
United Kingdom	1
Belgium	1
The Netherlands	2
Workforce in total	4

The appointed liaison officers act as support staff but are not explicitly attached to the CTTF.

C. Appointment of staff within the Europol National Units (ENUs) of EU Member States

Appointed officers at Europol National Units:	
Denmark	1
Belgium	1
Estonia	1
Germany	1
Finland	1
Portugal	1
Sweden	1
Ireland	2
Workforce in total	9

¹ EU Member States supported the work of the Counter Terrorism Unit at Europol with seconded experts before the reactivation of the Counter Terrorism Task Force (CTTF) was concluded by the European Council on 25 March 2004. These staff members are included in the overview.