



**COUNCIL OF
THE EUROPEAN UNION**

**Brussels, 2 June 2004 (03.06)
(OR. fr)**

9903/04

**ENFOPOL 57
ENFOCUSTOM 36**

COVER NOTE

from: Secretary-General of the European Commission,
signed by Ms Patricia BUGNOT, Director

date of receipt: 19 May 2004

to: Mr Javier SOLANA, Secretary-General/High Representative

Subject: Communication from the Commission to the European Parliament and the
Council
Enhancing police and customs cooperation in the European Union

Delegations will find attached Commission document COM(2004) 376 final.

Encl.: COM(2004) 376 final



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 18.5.2004
COM(2004) 376 final

**COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN
PARLIAMENT AND THE COUNCIL**

ENHANCING POLICE AND CUSTOMS CO-OPERATION IN THE EUROPEAN UNION

*I. REPORT ON ACHIEVEMENTS SINCE THE ENTRY INTO FORCE OF THE TREATY OF
AMSTERDAM*

II. PROPOSALS FOR IMPROVEMENTS

TABLE OF CONTENTS

1.	Introduction	4
I	REPORT ON ACHIEVEMENTS SINCE THE ENTRY INTO FORCE OF THE TREATY OF AMSTERDAM	7
1.	Legal Obligations and political Commitments for Police and Customs Co-operation (TEU, Schengen, Vienna Action Plan and Tampere European Council Conclusions) 7	
2.	Co-operation since May 1999 - achievements and assessment	9
2.1.	Police Co-operation.....	9
2.1.1.	Police aspects of Schengen Co-operation	9
2.1.2.	Europol.....	14
2.1.3.	Operational police co-operation, including the Task Force of EU Police Chiefs (TFPC)	19
2.1.4.	The European Police College (CEPOL)	21
2.1.5.	Other subjects mentioned in Art. 30 TEU.....	23
2.1.5.1.	Investigative techniques	23
2.1.5.2.	Forensic science	24
2.1.6.	Other subjects of police co-operation	26
2.1.6.1.	Terrorism.....	26
2.1.6.2.	Other police co-operation subjects.....	29
2.1.6.3.	Article 32 TEU	29
2.2.	Customs co-operation.....	31
2.3.	The OISIN and AGIS programs as instruments to promote police and customs co-operation in the EU.	34
II	PROPOSALS FOR IMPROVEMENTS.....	36
1.	Factors affecting police and customs co-operation.....	36
1.1.	Nature of police work.....	36
1.2.	Lack of strategic approach	37
1.3.	Proliferation of non-binding instruments	38
1.4.	Decision-making procedures in the Third Pillar	39
1.5.	Insufficient implementation of legal instruments adopted by the Council	39
1.6.	Lack of empirical research on police and customs co-operation	40

- 1.7. The nature of co-operation between police and customs 41
- 1.8. Third-pillar databases and communication systems 41
- 2. Conclusions and Recommendations 43
 - 2.1. Improving the flow of information 43
 - 2.2. Improving cross-border co-operation..... 45
 - 2.3. Creating a common culture, common instruments and methods. 47
 - 2.4. Counter-terrorism 48
 - 2.5. Customs co-operation..... 50
- 3. Final remarks..... 51

1. INTRODUCTION

The policy area of justice and home affairs, including co-operation between Member States' police services and customs administrations, was incorporated into an EU Treaty for the first time with the Maastricht Treaty of 1992¹. Article K of this Treaty mentioned customs and police co-operation as "matters of common interest...(F)or the purpose of achieving the objectives of the Union." Improved possibilities for co-operation in the field of justice and home affairs were opened up by the Treaty on European Union as amended by the Treaty of Amsterdam (hereafter abbreviated as TEU)², which entered into force on 1st May 1999. This Treaty included clearer objectives and a detailed description of actions to be taken in the field of police and customs co-operation. Moreover, it strengthened the institutional framework and further developed the decision-making process in this area.

From the outset, the Heads of State and Government were committed to bring forward the implementation of the Treaty provisions on justice and home affairs. Thus, the European Council of Cardiff of 15 and 16 June 1998 called on the Council and the Commission to submit, at its meeting in Vienna in December of 1998, an "Action Plan on how best to implement the provisions of the TEU on an area of freedom, security and justice." The resulting Vienna Action Plan of December 1998³ included a considerable number of measures regarding police and customs co-operation. Some of these should be implemented within two and others within five years after entry into force of the Treaty.

A special European Council on justice and home affairs matters was held in Tampere in October 1999, only five months after the entry into force of the TEU. Regarding police and customs co-operation, the Tampere European Council called for a number of measures in addition to those mentioned in the Vienna Action Plan. The Tampere program called on the Council and the Commission to promote the full and immediate implementation of the TEU on the basis of the Vienna Action Plan and the measures agreed in Tampere. Both the Vienna Action Plan and the TEU created the obligation to implement certain measures within five years of entry into force of the Treaty, that is, by October 2004.

The Tampere European Council tasked the Commission with the preparation of a Scoreboard to keep track of progress made toward the goals set out in that program. In establishing the Scoreboard, as well as in its regular updating, the Commission has concentrated on the measures called for by the Tampere Council. This Scoreboard has proven an effective tool for monitoring the evolution of the area of freedom, security and justice.

The Laeken European Council of December 2001 carried a mid-term review of the implementation of the Tampere conclusions. The Commission is currently preparing

¹ OJ C 191 of 29 July 1992. This Treaty marks a "new stage in the process of European integration" and introduces a new objective, i.e. "to facilitate the free movement of persons while ensuring the safety and security of their peoples, by including provisions on justice and home affairs"

² OJ C 340 of 10 November 1997

³ "Action Plan of the Council and the Commission on how best to implement the provisions of the Treaty of Amsterdam on an area of freedom, security and justice", OJ C 19/1 of 23 January 1999.

an evaluation of the full five-year period since Tampere. This Communication does not intend to pre-empt that formal evaluation exercise. It rather intends to identify those priority police and customs co-operation measures which should remain, or should be added to, the EU agenda in the next few years in order to achieve the necessary progress.

Since the entry into force of the TEU, the European Union has adopted a considerable number of measures to improve co-operation between Member States' police services and customs administrations. Towards the end of 2002, however, the Commission became increasingly aware of the need to review the major developments in this area in a Communication.

To begin with, it became evident that a number of measures contained in the Vienna Action Plan were not being implemented and that some of the bodies established by the Tampere European Council, such as the Task Force of EU Police Chiefs (TFPC), were facing difficulties. Moreover, there were indications that improvements in co-operation between the police and customs services of the Member States were necessary. There were also examples of highly successful co-operation between certain Member States in regions along their common borders, which were not being discussed at EU level.

Furthermore, police and customs co-operation is a broad area covering many diverse and highly technical subjects that are discussed in a variety of separate working groups and bodies, making it difficult to keep track of all relevant developments. A Communication would allow for a clear and comprehensive view of the state of play of police and customs co-operation in the EU.

The enlargement of the Union also made it necessary to clarify and set priorities for police and customs co-operation in the near future. The integration of ten new Member States into all the EU's police and customs co-operation structures will have considerable effects on an already complicated decision-making process.

Finally, progress in police and customs co-operation seemed to be slower than that achieved in the field of judicial co-operation in criminal matters in the EU. A Communication could provide elements to better judge the factors affecting the degree of progress in police and customs co-operation.

In the light of the above, the European Commission considered it necessary to provide an overview and analysis of police and customs co-operation in the EU as it has been evolving since the entry into force of the Treaty of Amsterdam in 1999. Its aim is to provide clarity as to what measures are required to make co-operation more effective toward the achievement of one of the main objectives of the Union, namely "*... to provide citizens with a high level of safety within an area of freedom, security and justice...*" (Article 29 TEU).

This Communication is limited to co-operation between police and customs authorities of the Member States in the fight against crime. It excludes matters that relate exclusively to judicial co-operation, as well as administrative assistance in

customs matters⁴ and customs cooperation defined under article 135 of the Treaty establishing the European Community (TEC)⁵, although it briefly touches upon these related areas when necessary. Furthermore, this Communication does not address preventive measures either adopted, or in the course of adoption, within the Community framework, however we should recognise that the Community has gradually taken measures to prevent intentional illegal acts, particularly relating to terrorism in the area of air and maritime transport. It should also be noted that the European Union Millennium Strategy on Organised Crime of May 2000 includes a number of recommendations regarding police co-operation. Where appropriate these measures are briefly examined in this Communication.⁶

The Communication is structured as follows. Part I recalls the specific legal obligations and political commitments set out regarding police and customs co-operation in the TEU, the Schengen Convention, the Vienna Action Plan and the Tampere European Council. It also presents a summary and a brief assessment of the developments in the main areas of police and customs co-operation, as well as suggestions on how to improve co-operation in the future. Part II provides an analysis of the main factors affecting police and customs co-operation in the EU, as well as recommendations as to the measures that, in the Commission's view, should be taken to ensure tangible progress in co-operation in the near future.

⁴ OJ L 82 of 22 March 1997, Council Regulation n°515/97 of 13 March 1997 on mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission to ensure the correct application of the law on customs and agricultural matters.

⁵ OJ C 325 of 24 December 2002.

⁶ The European Union Action Plan for the Beginning of the New Millennium on Prevention and Control of Organised Crime, OJ C 124 03 May 2000.

I REPORT ON ACHIEVEMENTS SINCE THE ENTRY INTO FORCE OF THE TREATY OF AMSTERDAM

1. LEGAL OBLIGATIONS AND POLITICAL COMMITMENTS FOR POLICE AND CUSTOMS CO-OPERATION (TEU, SCHENGEN, VIENNA ACTION PLAN AND TAMPERE EUROPEAN COUNCIL CONCLUSIONS)

The legal obligations and political commitments for police and customs co-operation in criminal matters in the EU can be found in the Treaty on the European Union (TEU), the Convention Implementing the Schengen Agreement (hereafter referred to as the Schengen Convention)⁷, the Vienna Action Plan of 1998 and the Tampere European Council Conclusions of October 1999.

The TEU states in article 29 that "*...the Union's objective shall be to provide citizens with a high level of safety within an area of freedom, security and justice by developing common action among the Member States in the field of police and judicial co-operation in criminal matters.*" This objective shall be achieved by preventing and combating crime, organised or otherwise, through i.a. closer co-operation between police forces, customs authorities and other competent authorities in the Member States, both directly and through Europol.

Article 30 explains that common action in the field of police co-operation shall include:

- operational co-operation between the competent authorities, including the police, customs and other specialised law-enforcement services of the Member States in the prevention, detection and investigation of criminal offences;
- in the collection and storage, processing and exchange of information, in particular through Europol;
- joint initiatives in training, exchange of liaison officers and forensic research;
- and common evaluation of investigative techniques.

This article also specifies a number of general and specific obligations as regards co-operation through Europol.

In addition to articles 29 and 30 TEU, there are also obligations resulting from the incorporation into the EU law of the Schengen Convention of 1990. The Schengen Convention provides for the abolition of border controls among Member States, while at the same time reinforcing control measures at common external borders. Police co-operation obligations were introduced so as to counteract any security deficit caused by the abolition of the checks at the internal borders. Matters concerning immigration, visas and asylum were incorporated into the Treaty on the European Community (Title IV, 'first pillar') and matters relating to police and

⁷ OJ L 239 of 22 September 2000.

judicial co-operation in criminal matters were incorporated into Title VI TEU, ('third pillar').

In addition to these legal obligations there exist other important documents which contain commitments at the highest political level to achieve concrete progress regarding police co-operation: The Action Plan to Combat Organized Crime of 1997⁸, the Vienna Action Plan of December 1998 and the Conclusions of the Tampere European Council of October 1999. More recently, the Commission published the document "The Prevention and Control of Organized Crime: a European Union Strategy for the beginning of the New Millennium".⁹

After the Amsterdam Treaty entered into force, the European Council of Tampere added a number of important measures to be implemented in the area of police co-operation. The main ones were the establishment of a European police chiefs' operational task force to i.a. contribute to the planning of operative actions; a call to enable Europol to participate in investigation teams and to ask Member States to start investigations; and the establishment of a European Police College for the training of senior police officials. The Tampere conclusions explicitly state that the Vienna Action Plan remains valid.

The fact that two European Councils agreed on such important measures just before and immediately after the entry into force of the TEU clearly shows the commitment to achieve concrete and speedy progress in police and customs co-operation at the highest political level in the Union.

In addition to the measures called for by the TEU, the Vienna Action Plan and the Tampere conclusions, other events have given political impulse to move forward in a number of areas. Thus, after the public order disturbances during the European Councils of Nice and Gothenburg in 2001, co-operation in the maintenance of public order was intensified. Similarly, in the wake of 11 September 2001 many measures were agreed upon to step up co-operation in the fight against terrorism.

Police co-operation in the Union extends and supplements already existing, successful bilateral co-operation between Member States. A more recent development in bilateral co-operation is the formalisation and intensification of co-operation between Member States sharing a common border through joint police stations or joint police and customs co-operation centres. The inter-linkage between bilateral developments and EU police co-operation is made by the Vienna Action Plan, which specifically calls for the further development of such co-operation throughout the Union.

⁸ OJ C 251 of 15 August 1997.

⁹ OJ C 124 of 03 May 2000.

2. CO-OPERATION SINCE MAY 1999 - ACHIEVEMENTS AND ASSESSMENT

2.1. Police Co-operation

2.1.1. *Police aspects of Schengen Co-operation*

As stated in Chapter 2, the Treaty of Amsterdam of 1997 incorporated the Convention Implementing the Schengen Agreement of 1990 in the framework of the European Union.

The aim of Schengen was “to abolish checks at [the] common border on the movement of persons¹⁰”. Police co-operation was thought of as one of the “complementary measures to safeguard internal security¹¹.”

The Schengen Convention entails a number of obligations for Member States¹² regarding police co-operation at their common internal borders, at the external borders of the Schengen territory (land, international airports, sea) and within the Schengen area in general to counteract any security deficit caused by the abolition of the checks at the internal borders. The Vienna Action Plan of 1997 and the Tampere Council Conclusions of 1999¹³ provided the normative and, to a lesser degree, operational underpinnings to the area of freedom, security and justice. The importance of ‘Schengen’ in that context is fundamental, since it is the core of that area, providing freedom to travel together with the minimum measures to offset security deficits and guarantees that the justice system can cope with the consequences of increased mobility. The Schengen Convention provides the legislative framework for the abolition of internal border controls, the introduction of checks at the external borders on the basis of common standards and the ensuing mandatory and enabling rules to spur law-enforcement co-operation.

The following obligations created by the Schengen Convention are the most important ones concerning police co-operation.

Article 39 stipulates that Member States “undertake to ensure” that police authorities shall assist each other to prevent and detect criminal offences. The requests for assistance must be exchanged via “central bodies responsible for police co-operation”, unless the urgency of the matter justifies that requests are exchanged directly between competent police authorities. Challenges do exist however, because the competences of police in the different Member States differ widely, and also because article 39(2) CAAS stipulates that written information can only be used as evidence in criminal proceedings in the recipient Member State with the consent of the competent judicial authorities of the requested Member State.

This article, together with article 46 (see below), has been the basis of a large number of bilateral agreements between Schengen States. The most comprehensive agreements are those that established permanent co-operation and information

¹⁰ See preamble of the Schengen Convention.

¹¹ Art. 17 of the Schengen Agreement of 1985.

¹² The Schengen Convention speaks of “Contracting Parties”. The expression “Member States” is used in this Communication for ease of reading.

¹³ See annex III.

exchange structures in the form of Joint Police Stations (JPS) and Police and Customs Co-operation Centres (PCCC) at internal borders. Examples are the PCCC at Kehl/Offenburg (Germany/France)¹⁴, at Tournai (Belgium/France)¹⁵; Ventimiglia and Modane¹⁶ (France/Italy), Canfranc-Somport-Urdos, Le Perthuis-La Junquera, Melles Pont du Roy-Les et Biriadou-Irún (France/Spain)¹⁷, Tuy/Valença do Minho, Caya/Elvas, Vilar Formoso/Fuentes de Oñoro, Vila Real de Santo Antonio/Ayamonte (Spain/Portugal)¹⁸.

Important trilateral forms of police co-operation have developed between the Netherlands, Belgium and Germany in the area around Maastricht, Aachen and Eupen. An agreement between France and Luxembourg has been concluded¹⁹, which is not yet operational. A quadrilateral co-operation structure between Luxembourg, France, Belgium and Germany is close to being formalised. Such co-operation centres have proven effective in addressing the 'security deficits' in border regions caused by the abolition of border controls and the fact that law-enforcement services' intervention has to stop at the internal borders. Co-operation involves facilitating exchanges of information, joint operations and controls, and the planning of co-ordinated actions. It should be noted that such forms of co-operation are considered useful by both the services of the Member States involved and the population in the regions where they have been set up.

The Vienna Action Plan calls for the extension of such cross-border co-operation. The Commission has concluded that a wider application of this model throughout the Union would be a significant contribution to fighting crime and to improving mutual trust and co-operation between law-enforcement services from different Member States. It would be useful if examples of such co-operation could be agreed upon as a model to be applied by those Member States that have not yet done so. The draft Council Recommendation on common commissariats and police and customs co-operation centres²⁰ prepared by Belgium during its Presidency would be an excellent basis. The Commission will use the AGIS program to further promote the establishment of such models of co-operation.

Article 44 of the Schengen Convention contains the short-term obligation, as well as a long-term undertaking, to improve communication links, in particular in border areas. There is, however, not enough information available to determine the extent to which this has actually been done. The links to be established are not limited to phone and fax, but also encompass data and computer links. The options to examine in the long term focus on improvement of radio communications.

¹⁴ Agreement of 07 December 1995 on police co-operation in border regions through the development of permanent, joint Franco-German police stations as well as the Intergovernmental Agreement of Mondorf-les-bains of 09 October 1997 on co-operation between police and customs authorities in the border regions (entered into force on 01 April 2000).

¹⁵ Agreement of 05 March 2001 on police and customs co-operation in the border regions (creating the Tournai Police/Customs Co-operation Centre).

¹⁶ Agreement of Chambéry of 03 October 1997 setting up the joint services of Ventimiglia and Modane.

¹⁷ Agreement of Blois of 07 July 1998 on cross-border customs and police co-operation.

¹⁸ Agreement of 19 November 1997.

¹⁹ Agreement of 15 October 2001 with Luxembourg.

²⁰ Council document ENFOPOL 45 of 05 April 2002.

Radio communications are mostly hindered by the technical diversity of the two main communication standards, TETRA and TETRAPOL. To overcome this problem, the exchange of radio equipment between police services in border regions is foreseen in a large number of the aforementioned bilateral agreements. In order to promote inter-operability, the Article 36 Committee on 15 December 2002 endorsed the conclusions of a seminar held in Helsinki on 20 and 21 September 1999²¹, that proposed interoperability between TETRA and TETRAPOL. In this context, the Commission welcomes the questionnaire established by the Greek Presidency in the first half of 2003 to get a clearer view of developments regarding the procurement, installation, operation and interoperability of the digital wireless systems²².

Direct radio communications are especially required in case of cross-border operations. In all other cases, information exchange on the basis of articles 39 or 46, and increasingly via direct (radio) relays with the JPS or PCCC, is usually enough to cover communication needs. Since no data are available for cross-border operations, it is not possible to assess whether real communication needs remain unattended. Besides interoperable communication systems, the exchange of phone numbers and frequency tables, plus knowledge of the language of the other Member State are equally necessary for efficient communication. The Commission therefore strongly supports language training of police as one of the key issues to make cross-border police co-operation work.

Police in border areas could also consider using GSM/GPRS phones to contact their equal number across the border when direct contacts are necessary. Although it may seem self-evident, there is resistance among some police services on the grounds of risks to confidentiality and dependence on commercial providers. As some Member States' police have proven, however, such concerns can be addressed by using encryption.

Article 45 stipulates that Member States "undertake to adopt the necessary measures" to ensure that non-nationals complete and sign the registration forms of commercially rented accommodation, confirm their identity by providing a valid identity document, and that these forms are kept or forwarded to the competent authorities. This information can be important for law enforcement, as past successes in the fight against terrorism have shown.

However, it is currently not clear how Member States implement this obligation and how the information is used in law-enforcement practice. It therefore seems necessary to discuss the subject in the Council.

The data that are exchanged must be protected in accordance with article 129, as well as with articles 126 and 127 of the Schengen Convention, which entail, *inter alia*, that the Recommendation No R(87)15 of 17 September 1987 of the Committee of Ministers of the Council of Europe regulating the use of personal data in the police sector must be respected as mandatory. One obligation worth mentioning here because of its operational usefulness for cross-border co-operation is the undertaking to revise every six months the so-called "Handbook on cross-border police co-

²¹ See Council document 11626/2/99 ENFOPOL 64 Rev 2, and 142117/99 CATS 40.

²² See Council document 15788/02 ENFOPOL 159.

operation". This obligation results from the decision of the Schengen Executive Committee of 16 December 1998²³. The importance of the Handbook lies in its provision of practical details on how to conduct co-operation between police authorities across the internal borders. The Handbook contains data such as contact addresses and phone numbers, and limitations and obligations of cross-border police co-operation. Member States undertook to integrate the Handbook in their national orders and to update it. The initiative of the 2003 Greek Council Presidency to update the Handbook and the submission by the Italian presidency of a revised version, should therefore be welcomed.

Besides the above-mentioned obligations, the Schengen Convention created the following co-operation instruments, or enabling rules, that facilitate accomplishment of its objectives.

The first one concerns discrete surveillance of a suspect (article 40) and the second one the case where a person is caught in the act and flees arrest by crossing international borders (the so-called 'hot pursuit', articles 41 to 43). Because the permission to operate outside the national jurisdiction is an exception, legal guarantees and limitations are included in the set of rules, which make them very cumbersome for the police to use. Although no precise figures are available, there are indications that little use is made of these instruments.

These restrictions can be relaxed by means of bilateral agreements, but no information is available about increased use of cross-border operations in that context. At EU level, a number of initiatives have been taken to make the application of these articles easier. Thus in October 2000 the Council adopted a Decision to simplify the procedure to amend the references to *inter alia* "officers" and "authorities" in articles 40 and 41 of the Schengen Convention²⁴. Also, a Council Decision was adopted to extend the scope of article 40 by allowing surveillance for more criminal offences and also to encompass persons that could lead to the suspect²⁵. In the second half of 2001, the Belgian Council Presidency convened an expert group to make concrete recommendations on how to extend the possibility of cross-border pursuits via air, rails (international trains) and water. These recommendations were not further discussed in the Council.

The Commission considers that the establishment of an area of security requires the elimination of obstacles to co-operation caused by the type or means of cross-border movement. Police should be able to use cross-border pursuits for more types of crime and have, in cases where the competent local authorities of the Member States where the pursuit takes place are unable to intervene promptly, the means to effectively intervene with a view to establishing the pursued person's identity by and transferring him/her to the aforementioned competent local authorities. It therefore recommends continuing the work of the expert group mentioned above, to further examine conditions and competencies for cross-border operations. The Commission is of the opinion that the efficacy and viability of the instrument would increase if Member States applied a uniform set of rules and conditions.

²³ Council document SCH.Com-ex (98) 52.

²⁴ Council Decision of 28 September 2000, OJ L 248 of 03 October 2000.

²⁵ Council Decision of 02 October 2003, OJ L 260 of 11 October 2003.

Article 46 of the Schengen Convention gives police authorities the right to exchange information “which may be important in helping” to prevent crime and threats to public order with another Member State on their own initiative, “without being asked”. No comparable data are available to determine the degree of implementation of this article, nor whether police action has been taken on the basis of information exchanged under it. This is also the case for the application and use of the other articles referred to in this section.

An effective means of obtaining and exchanging information is the secondment of liaison officers, to which article 47 refers. The specific procedure to be able to make use of the services of such officers posted in third countries was amended by a Council Decision adopted on 27 February 2003 on the initiative of the Danish Council Presidency²⁶. The extent to which the Decision is being used in practice is not clear. The Commission therefore proposes that the Council examines this question.

The articles covering the Schengen Information System (SIS) create the obligation to “set up and maintain a joint information system” describing the action to be taken when a positive identification is made on the basis articles 95-100 and prescribing the data-protection regime. These articles open the possibility to enter and query certain data as described in articles 95-100. The links between the Member State that enter SIS-data and the law-enforcement officers who identify a wanted person or object are the SIRENE offices in each Member State. In most Member States, SIRENE is also the ‘central body’ mentioned in article 39 and 46 (see above).

In 1999, ten Member States used the SIS. By March 2001 the number had grown to 15, after the five Nordic countries joined the SIS. On 29 May 2000, the Council approved the request of the United Kingdom to participate in some aspects of Schengen, *inter alia* police co-operation, the fight against drugs and the SIS. A similar decision was taken on 28 February 2002 with regard to Ireland. Preparations are under way to connect the United Kingdom to the SIS by the end of 2004.. Ireland is expected to follow later. That will bring the total number of SIS users to 17.

The current SIS has only eighteen slots, however, and ten new Member States must be connected in the future. The Commission was therefore entrusted with the development of a second-generation SIS. Because of legislative initiatives by the Spanish presidency in the first half 2002 to add new functions to the SIS²⁷ and the Council Conclusions on SIS II²⁸, the new SIS will have a much larger number of users (not only Member States, but also Eurojust and Europol) and also contain new functionalities (e.g. search on incomplete data, interlinking of alerts on persons) and more data categories (e.g.. biometrics, aircraft and containers). Having regard to the profound positive operational impact and significance of SIS for fighting crime, a rapid introduction of new functionalities, if possible in the current SIS, should be promoted.

²⁶ Council Decision 2003/170/JHA of 27 February 2003, OJ L 067 of 12 March 2003.

²⁷ OJ C 160, 04 July 2002.

²⁸ Adopted by the JHA Council of 5 and 6 June 2003.

In July 2003 the Commission submitted a proposal to give Member States' vehicle registration authorities access to SIS to prevent stolen vehicles from being registered²⁹. The procedures for SIS-SIRENE interworking are compiled in a manual that needs regular updating in order to ensure that organisational and new legal obligations are met effectively. This has never been done so far. In the first half of 2003 the Greek Presidency took the initiative for the adoption of a formal procedure to update the manual regularly. It proposed that the Commission be put in charge of this task. It is essential that the procedure be adopted soon³⁰.

The SIS is a major accomplishment in the field of police co-operation in the Union. By March 2003, more than 11 million records on wanted persons and objects had been recorded. Over 35.000 positive identifications of persons or objects are reported annually to the national SIRENE. The success is mainly due to the central role which SIS plays in the concept of the abolition of border controls, the performance of external border controls, its integration in the normal national police and border-control applications, and the intense follow-up on the level of the Council Working Groups under each EU Council Presidency.

SIS has fulfilled the high expectations of the law-enforcement community and is now set for an ambitious enlargement (SIS II) with more functionalities. Over time, more sophisticated functionalities mean that the SIS could gradually evolve into a tool that could be used for other purposes, to better reflect the reality of shared responsibilities for a common security area. An example of such a more sophisticated functionality would be the possibility to store biometric data. An essential benefit of such an evolution would be the possibility to run more precise searches in order to avoid the problems of today's alphanumeric searches that will inevitably become less precise as the database grows. This does not mean, as the Justice and Home Affairs Ministers confirmed at their meeting of 5 and 6 June 2003, that the nature of the system as a simple and fast "hit-no hit" system should be amended. In any case, this possible evolution should not affect the current SIS, but rather the future SIS II.

2.1.2. *Europol*

Articles 29 and 30 of the TEU and the Tampere conclusions emphasise the role of Europol in law-enforcement co-operation in the European Union and contain a number of concrete measures to be taken within five years after the TEU's entry into force. Earlier, the Vienna Action Plan had listed a number of measures to be taken regarding Europol.

Formally, most subjects relating to Europol mentioned in the TEU and the Tampere program have been addressed through Council Decisions. Many measures mentioned in the Vienna Action Plan have been implemented as well.

The first step was taken in 2000, with the adoption by the Council of a Protocol to extend Europol's competence to money laundering in general. As this

²⁹ COM (2003) 510 final

³⁰ Initiative of the Hellenic Republic with a view to the adoption of a Council Regulation on procedures for amending the **Sirene Manual** OJ C 082 , 05 April 2003, as well as the Initiative of the Hellenic Republic with a view to the adoption of a Council Decision on procedures for amending the **Sirene Manual** OJ C 082 , 05 April 2003.

Communication goes to print, there are still nine Member States which have not yet ratified the Protocol.³¹

In December 2001, recognizing that international organised crime does not limit its activities to the areas for which Europol is competent, the Council decided to extend Europol's mandate to all forms of crime mentioned in the Annex to the Europol Convention.³² The extension, which will make it easier for Europol to organise its work effectively, took effect on 1 January 2002.

In November 2002, the Council adopted a Protocol amending the Europol Convention with specific articles on Europol's participation in Member States' joint investigation teams and the possibility for Europol to request the competent authorities of the Member States to start or co-ordinate criminal investigations in specific cases. The Protocol is now in the process of being ratified by Member States.³³

A new protocol has been adopted by the Council in November 2003. It tackles several problems preventing the extension of Europol's operational capacities. It allows direct contacts between Europol and the relevant police departments of the Member States, and the query by the latter of the Europol Information System.

Developments regarding Europol over the past few years were not limited to measures required by the TEU, the Vienna Action Plan and Tampere. Already during the first year of Europol's being operational it was realised that the organization was not yet as effective as it should be.

One key problem is the reluctance of Member States to transmit information and intelligence to Europol, which affects Europol's capacity to provide the necessary added value in criminal analysis at EU level. As a consequence, Member States often consider that Europol is not meeting the demands of its customers, their law-enforcement services, and are not motivated to provide it with more information. Another reason is the absence of an information system, which is still being developed as this Communication goes to print (see below).

In 2002 an evaluation process was therefore begun by the Europol Management Board with the aim of identifying the main factors hampering effective co-operation with Europol. Subsequently, the Heads of Europol National Units (HENU) elaborated a long list of difficulties and possible solutions. One of their main conclusions was that the Europol Convention needed to be adapted and made more flexible. Other important HENU conclusions concern the need to do away with the various obstacles to the transmission of information, often of a legal nature, existing in the Member States. These conclusions, contained in an internal 'matrix document' of the summer of 2002, are proposed for implementation within 12 months.

Detailed reflections in the first half of 2002 led to the elaboration of a Protocol overhauling the Convention. The Protocol covered not only the areas of analysis,

³¹ OJ C 358 of 13 December 2000. Until 5 June 2003, the protocol had been ratified and notified by DE, ES, FR, GR, PT and SW.

³² OJ C 362 of 18 December 2001.

³³ OJ C 312 of 16 December 2002.

data access, and data protection, but also democratic control over Europol. On 19 December 2002 the Council reached a political agreement on it.³⁴ In addition, in the spring of 2003 the third round of mutual evaluations started to examine the exchange of information and intelligence between the Member States and Europol, and among the Member States, respectively. This evaluation should lead to important recommendations on how to improve this aspect of co-operation further.

Apart from information coming from EU Member States, Europol also depends on information held outside the EU in order to have a better information basis for the performance of its tasks. Notable progress was achieved in Europol's co-operation with third countries and international organisations on the basis of the list established by a Council Decision of 27 March 2000.³⁵ These co-operation agreements are essential for Europol's work, since they are the formal requirement to enable Europol to exchange personal data with the respective third countries and bodies.

To date, Europol has signed co-operation agreements, including the possibility to exchange personal data, with several accession countries, Iceland, Norway, and Interpol. It has also signed agreements with the European Commission and the European Central Bank. Currently Europol is negotiating an agreement with Eurojust and an administrative arrangement with the European anti-fraud Office (OLAF). By the end of 2003 Europol will have concluded agreements with all the accession and candidate countries.

The events of 11 September 2001 helped to speed up the conclusion of agreements with the US. On 6 December 2001, Europol signed a strategic co-operation agreement with the United States, and in December 2002 an agreement covering the exchange of personal data. The conclusion of the latter agreement is a positive development in view of the different data-protection legislation of the United States and the European Union.

A key prerequisite for Europol's effective functioning is the existence of the Europol Information System (EIS). For the past few years, Europol has been working on a very sophisticated system that would allow decentralised storage and retrieval of information on organised crime held by Member States and Europol. Until now it has not been possible to put a system into place, however, due to the complexity of the system (free text translation into 11 languages). The Commission considers it essential for Europol's performance that a simplified version of the EIS becomes available as soon as possible. The more sophisticated version should be implemented at a later stage.

Europol's management has also been subject to a continuous review. It gradually became apparent that Europol's staff regulations were not applicable to or lacked specific provisions for the Europol Directorate. These regulations were therefore amended to include provisions on the selection, dismissal and disciplinary procedures for the Europol Director and the Deputy Directors.³⁶

³⁴ Council Document 13254/02-EUROPOL 76 rev 5.

³⁵ OJ C 106 of 13 April 2000.

³⁶ Council Act amending the Europol Staff regulations of 19 December 2002, OJ C 24 of 31 January 2003.

Another important subject is democratic control over Europol. In particular the European Parliament has regularly criticised that control over Europol is unsatisfactory. In order to provide a clear view of this question, the European Commission submitted a Communication on Democratic Control over Europol to the European Parliament and the Council on 26 February 2002³⁷. It described and assessed the many types of control over Europol (Europol Convention, data-protection rules, the supervisory functions of the Management Board). The conclusion was that, in view of the fact that Europol has limited competences compared to the national police services of the Member States, it can not be said that there is a lack of democratic control in its case.

The Commission considered, however, that the control exercised by fifteen individual national parliaments and the limited role given to the European Parliament fragmented democratic control over Europol. It therefore made some recommendations to improve the situation. The main one was the establishment of a joint Committee of representatives from the national Parliaments and the European Parliament, which should closely monitor developments concerning, and exchange information with, Europol.

Much has been achieved by Europol in the past four years. The Europol-related points from the Treaty and the Tampere Conclusions have been implemented, but there are still several subjects from the Vienna Action Plan which need implementation or have not yet been examined in detail. In some cases it might be necessary, however, to examine if the recommendations made in 1998 are still relevant.

Among the measures to be taken within two years after the entry into force of the TEU, the Vienna Action Plan calls for the examination of Europol access to SIS data. This has been under discussion for some time. The Council has agreed in principle that Europol will get partial access to the SIS, in particular to data stored pursuant articles 95, 99 and 100 of the Schengen Convention. To that end, the Council will soon decide on an amendment to the SIS Convention, introducing a new Article 101A, which will establish the legal basis for Europol's access to the SIS.

Nevertheless, due to technical restrictions there is a risk that Europol's access will only be possible once the SIS II has been implemented, which would mean not before 2006. The Commission considers that this period is much too long and suggests that pragmatic alternative solutions should be considered, for example giving Europol read-only access via National SIS. It should be recognized, however, that such an arrangement would require a corresponding amendment of the Schengen Convention.

The call for a database of pending investigations was discussed at Europol with the Europol National Units, but no further action has been taken yet. In view of the technical and legal complexity that such a project would entail, it would seem unrealistic to expect it to come into being in the near future. .

³⁷ COM(2002) 95 final.

Concerning the measures to be taken within five years laid down in the Vienna Action Plan, the following subjects require further examination:

No progress has been made in the area of improving statistics on cross-border crime. There are no agreed criteria for EU-wide statistics yet. This is due to a lack of common definitions of offences, which leads to national statistics not being comparable. Discussions about the extension of Europol's mandate showed that it would be difficult to agree on common definitions for certain crimes.

The question of whether and how Europol could have access to the Customs Information System (CIS) has not been discussed in depth yet. The CIS Convention, in its Article 7 III, would in principle allow for Europol to have access. In order for it to do so, though, an additional protocol is necessary. The Commission takes the view that this important question should be settled as soon as possible.

Concerning the research and documentation network on cross-border crime, one concrete step has been the establishment of the Knowledge Management Centre at Europol, providing information about the existence of special expertise in the area of law enforcement in the Union, for example at universities, but also about more operational issues, such as technical equipment. Moreover, Europol is working together with Member States and the Commission towards an upgrading of the annual EU Organised Crime (OC) Situation Report, from a descriptive document towards a threat assessment. The aim is to make the OC report an essential planning instrument in the EU's fight against organised crime. The Commission proposes to discuss with Europol whether the measures taken so far are those intended by the Vienna Action Plan, and what possible additional action needs to be taken.

As regards the call for the elaboration and implementation of an information strategy to make the work and powers of Europol known to the public, in the past two years it has become evident that it is more important to raise awareness within the Member States' law-enforcement communities than among the general public. Therefore, the focus of Europol's and Member States' information strategies has been the development of an awareness programme for law-enforcement agencies. This will be implemented in 2003 and 2004, co-funded by the EU's AGIS Programme.

The Commission takes the view that an effective, long-term awareness program is essential to improve mutual understanding and co-operation between Europol and the Member States' law-enforcement services. The Commission is pleased that the AGIS program can provide temporary support to launch the program. Nevertheless, longer-term financing must be provided by Europol and the Member States.

In the first semester of 2002 the Council examined the possibility of a simplified procedure for future amendments to the Europol Convention. Such a measure was considered necessary because current procedures require each and every amendment to the Convention to be ratified by all Member States. Until now the discussions could not be concluded. In the Commission's view, it is crucial to simplify the procedure for future amendments to the Europol Convention, especially in the light of enlargement. The only workable option is to replace the Convention by a Council Decision pursuant Article 34 (2) c. The Commission is prepared to put forward a proposal for such a draft Council Decision in this regard.

Europol has been fully operational for four years now. During that time its potential as an essential tool in the EU's fight against serious international crime has become ever clearer. All the concrete measures called for by the TEU and Tampere have been adopted by the Council in the form of Decisions or Acts, some requiring ratification by the Member States. The full ratification and implementation of all these measures will enable Europol to function more effectively.

As regards the future of Europol, what is required in the short term is a period of consolidation during which all legal acts relating to Europol are ratified and implemented, the awareness programme continued, a simple version of the EIS is established and the report of the HENUS implemented.

After this consolidation, certain investigative powers should be attributed to Europol. The discussion about such an important development would have to include the possible consequences for judicial and parliamentary control over Europol.

2.1.3. *Operational police co-operation, including the Task Force of EU Police Chiefs (TFPC)*

The Vienna Action Plan called for the development and expansion of operational co-operation between law-enforcement services in the Union within two years after entry into force of the TEU. It proposed to use the joint actions carried out by the Member States' customs administrations as a model.

Conclusion 44 of the Tampere European Council can be considered as a first concrete effort to develop and expand such co-operation. It calls for the establishment of a "European Police Chiefs Operational Task Force to exchange, in co-operation with Europol, experience, best practices and information on current trends in cross-border crime and contribute to the planning of operative actions."

Since its first meeting in April 2000 the Task Force of EU Police Chiefs (TFPC) has met eight times, once per Council Presidency. A large part of the meetings was spent trying to agree on the exact tasks it should perform. At its meeting in Copenhagen in July 2002 the TFPC agreed on the following main functions:

- To promote a coordinated approach focused on cross-border criminality in the EU, based, *inter alia*, on the Europol organized crime analyses.
- To adopt initiatives, plan and start operations involving the participation of two or more Member States and directed towards priority sectors in the fight against organised crime.
- To serve as a forum for the exchange of information and for discussions on crime trends and to define strategies to combat crime.
- To make policy recommendations to the Council in relation to the police (generic term) and ensure their implementation and follow-up.
- To contribute to achieve a high standard of European police systems regarding the rule of law and democratic principles.

The Copenhagen meeting in 2002 also agreed on a methodology for the preparation, implementation and follow-up of joint operations. From that moment on, joint operations would be proposed by a "leading country" on the basis of strategic analyses prepared by Europol; other interested countries could join the operational team; Europol would provide the analytical support; progress and final reports are to be submitted to the TFPC. It is still not fully clear, however, who is responsible for the preparation, planning, monitoring and evaluation of the joint operational actions.

At its meeting in April 2002, the TFPC agreed on the creation of a "Steering Committee" to ensure the continuity of its work by adequately preparing meetings, monitoring the follow-up of recommendations and identifying and proposing subjects to be discussed. The Steering Committee is composed of the incumbent, the outgoing and future Council Presidencies, Europol, the Commission and the General Secretariat of the Council. According to the Rome meeting of the TFPC in 2003, the role of this Steering Committee should be strengthened, for example by meeting more frequently or opening its sessions to representatives of the International Relations Unit of the Member States' Police. The next meeting of the Steering Committee will take place on 30 January 2004.

The TFPC has taken a considerable number of initiatives for activities, e.g. regarding the protection of the Euro, illegal immigration, trafficking in human beings, vehicle crime and child abuse. There is general agreement, however, that, so far, these efforts have not led to an operational added value at EU level (although the decisions taken at the last TFPC meeting, on 19 and 20 May 2003, on future joint actions against illegal immigration and the trafficking in human beings and drugs are encouraging).

This lack of effectiveness can be explained by a number of factors. Leading police officials of the Member States usually have to deal with a great number of issues ranging from the administrative to the highly political, so that European issues are only one of many priorities.

Moreover, there are considerable differences in the competences of the Member States' police representatives in the TFPC. In some cases there is clearly one national head of police who is able to take decisions on the commitment of resources, whereas in other Member States the main police delegate to the TFPC represents a decentralised national police force. In countries with federal systems representation is quite complex. Finally there is the problem of continuity between plenary meetings of the TFPC, although the situation has improved with the creation of the Steering Committee mentioned earlier.

Organizational weaknesses have added to the problems of the TFPC. The fact that there is usually only one meeting of the TFPC per Council Presidency leads to overloaded agendas, which in turn lead to little in-depth discussion; late delivery of documents also leads to insufficient preparation by delegations. It should be pointed out that the functioning of the TFPC is not facilitated by its operating outside the Council structures.

Nevertheless, the importance of TFPC meetings in improving bilateral and multilateral contacts between the leading police officials in the Member States should not be underestimated, since these are the only meetings where they all come together at the one time.

As the leading police officials in the Union, the members of the TFPC play an important double role: by virtue of their proximity to ministers, they can influence political decisions concerning police matters, while at the same time having the competence to decide on the use of police resources. As to the future of the TF, the Commission takes the view that serious consideration should be given to its integration into the formal structures of the Council. This would enable the TF to participate in the decision-making process on all relevant police co-operation matters in the EU. As long as this integration is not realised, the TF should focus on the preparation, planning and follow-up of joint operational police activities in priority areas.

At the last meeting of the TFPC in March 2004, a reflection document dealing with the future of the Task Force in the light of the proposal set out in the Draft Treaty on a Constitution for Europe was discussed.

2.1.4. *The European Police College (CEPOL)*

The Tampere European Council called for the establishment of a European Police College for the training of senior law-enforcement officials, starting as a network of existing national training institutes. On 22 December 2000, the Council adopted a Decision establishing a European Police College³⁸, known as CEPOL for its French abbreviation.

Article 6, paragraph 1 of the Council Decision of 22 December 2000 states that "the aim of CEPOL shall be to help train the senior police officers of the Member States" and "support and develop a joint approach to the main problems facing Member States in the fight against crime, crime prevention, and the maintenance of law and order and public security, in particular the cross-border dimensions of those problems."

CEPOL's main objectives and tasks are to increase knowledge of the national police systems and structures of other Member States, of Europol and of cross-border police co-operation within the European Union; to strengthen knowledge of international instruments, in particular those which already exist at European Union level in the field of co-operation on combating crime; to provide appropriate training with regard to respect for democratic safeguards with particular reference to the rights of defence; and to encourage co-operation with other police training institutes.

In order to achieve its objectives, CEPOL may undertake a number of actions, mainly provide training sessions, based on common standards, for senior police officers; contribute to the preparation of harmonised programmes and help set up appropriate advanced training programmes; provide specialist training; develop and provide training for trainers; disseminate best practice and research findings; develop and provide training to prepare police forces of the European Union for participation in non-military crisis management and for police authorities from the States applying for membership of the European Union, and facilitate relevant exchanges and secondments of police officers in the context of training. CEPOL may co-operate with the national police training institutes of non-member States of the European

³⁸ Official Journal L 336, 30 December 2000.

Union. In particular, it makes its infrastructures available to senior police officers from the applicant countries and Iceland and Norway, and will consider the possibility of allowing officials of the European Institutions and other European Union bodies access to its facilities.

According to the Council Decision creating it, by the end of 2003 CEPOL shall submit to the Council a report on its operation and its future. Because the Council Decision of 22 December 2000 provided it with neither legal personality nor a budget, CEPOL has had a difficult beginning. During its first year of existence, it had neither a budget nor a Secretariat; moreover, once a decision was made to provisionally house its Secretariat in Copenhagen, it continued to face administrative difficulties, as no personnel could be made available to it.

It is against the background of this difficult beginning that any evaluation of CEPOL's work should be undertaken. The progress achieved is considerable. In the period since 2001, CEPOL has offered a growing number of courses: from 10 in 2001 to 38 in 2003, covering an ever broader spectrum of subjects, from counter-terrorism to public order to border control. CEPOL has also developed its website and, more importantly, the European Police Learning Network (EPLN), which is an innovative instrument offering virtual police training on the Internet. The Commission has supported the development of the EPLN through the OISIN and AGIS programs.

The European Council, meeting in Brussels on 13 December 2003, agreed on the seats of a number of European agencies, among them CEPOL (United Kingdom). As this Communication goes into the final stages of its adoption, there are two CEPOL-related initiatives under discussion: an Irish one to amend the Council Decision of 22 December 2000 in order to give CEPOL legal personality³⁹, and one from the United Kingdom, establishing CEPOL's seat in Bramshill⁴⁰.

The adoption of these two initiatives should help CEPOL overcome its two most pressing problems in the short term. However, it is clear that these amendments to the original Council Decision creating CEPOL are only partial solutions to its problems, and that a farther-reaching debate about CEPOL's future structure should take place.

Apart from the specific problems deriving from CEPOL's lack of legal personality and the question of the permanent seat of its Secretariat, some structural problems have become evident in its operations. These problems were mostly related to individual police schools' inability to properly organize courses, and/or to reduced participation caused by insufficient knowledge of foreign languages among potential beneficiaries. Some candidate countries also faced financial problems that limited their participation in CEPOL activities.

The structural problems summarized above have been the subject of ongoing reflection and discussion within CEPOL. The need to provide better language training for police officers in the EU has been recognized and will be tackled, at least

³⁹ Official Journal C 1 of 06 January 2004.

⁴⁰ Official Journal C 20 of 24 January 2004.

in part, by the EPLN. Nonetheless, it remains one of the most important obstacles to improved co-operation in police training and should be a priority in this field.

The fact that different police schools in the EU have different approaches to training should not be a problem in itself. However, a common methodology and shared standards of quality are necessary in order to ensure a certain minimum level of police training across the EU, at least in those areas of common interest and for officers directly involved in them.

As to the future, CEPOL should focus on the development of common curricula and teaching methods in priority areas of police co-operation, which would then be applied in a uniform manner in all national police schools. To fulfil its role properly CEPOL should have a legal personality, an adequately staffed secretariat and be financed from the EU budget.

2.1.5. *Other subjects mentioned in Art. 30 TEU*

2.1.5.1. Investigative techniques

In their dealing with crime, police perform a double function: On one hand, they collect information to detect crime and threats to public security and, on the other hand, they investigate crime, providing support to the judicial authorities in their prosecution activities. In order to fulfil these tasks, the police use different investigative techniques.

Art. 30.1(d) of the TEU stipulates that common action in the field of police co-operation shall include “the common evaluation of particular investigative techniques in relation to the detection of serious forms of organised crime.” The Vienna Action Plan calls for this evaluation to be made within two years after the entry into force of the TEU. However, although common guidelines have been developed in the framework of Europol, for example on the use of informants or on controlled deliveries, these are but guidelines and are not necessarily applied in all Member States. Until now, there is no generally agreed interpretation of article 30.1 (d) TEU at the EU level.

Article 30.1 (a) TEU makes a clear distinction between “*prevention, detection and investigation* of criminal offences”. This would seem to confirm that detection is different from investigation. It could therefore be concluded that the “particular investigative techniques” referred to in Art 30 (1) (d) are techniques used by law-enforcement services in finding traces which may lead to determine the existence of criminal activity, such as risk analysis, profiling, and the monitoring of money transfers. Such techniques have proven to be effective tools in the detection of serious crime related to drug trafficking and money laundering⁴¹. The Commission therefore takes the view that it would indeed be useful to have a common evaluation of these techniques by experts, to see which of them can be used as 'good' or 'best' practices in given situations.

⁴¹ Reports on the second round of mutual evaluation: "Law enforcement and its role in fighting drug trafficking". Document 9615/3/03 REV 03 CRIMORG 43 of 22 September 2003.

The Commission also considers that it would be advisable not to limit the evaluation exercise to the investigative techniques used for the detection of crimes, but extend it to those that are of particular relevance to investigate serious crime. Examples of such techniques are the ones used in the collection and handling of information (e.g. management of informants, surveillance, controlled deliveries, covert operations, searches and seizures), as mentioned in the Convention on Mutual Assistance and Co-operation between Customs Administrations⁴² and the Convention on Mutual Legal Assistance in Criminal Matters⁴³. Other examples come from the field of forensics, such as crime scene management.

The draft Constitutional Treaty proposed by the Convention on the future of Europe slightly modifies the text of article 30 (1) (d). It does not speak of the "common evaluation" of investigative techniques, but of the possibility of a framework law to establish "measures concerning...the common investigative techniques concerning the detection of serious forms of organised crime".

In the view of the Commission, the aim now should be for the Council to agree on the use, throughout the Union, of proven investigative techniques to detect serious forms of crime. The Commission is of the opinion, however, that such measures should not be limited to the detection of crimes, but should also cover their prevention and investigation.

Finally, the Commission deems it useful to refer briefly to the importance of using DNA profiles in solving crime. In recent years some Member States have achieved impressive successes in solving crimes more quickly, or at all, with the help of national DNA data bases which they have been building up. The Union's capacity to solve crimes better and more efficiently would be greatly strengthened if such databases were set up in all Member States. Care should be taken that national and EU data protection legislation are fully respected. The Union's crime solving capacity would be enhanced further if Member States' law-enforcement services were able to compare DNA profiles.

2.1.5.2. Forensic science

Forensic science refers to the examination of crime scenes, recovery of material evidence, laboratory examinations, interpretation of findings and presentation of the conclusions for intelligence and investigation purposes, or as evidence in court. The various fields of forensic expertise include for example toxicology, serology and DNA profiling, trace evidence (e.g. fire debris, glass, paint, gunshot residues), firearms and ballistics, handwriting and document examination, fingerprints, marks and impressions (e.g. tool marks, shoe prints), audio, video and computer analysis, accident investigation, crime scene investigation and forensic pathology.

The final aim of these activities is to contribute to the truth-finding process in criminal cases. It is therefore essential that forensic investigations have a very high quality and are performed by an independent, impartial and integer person.

⁴² COUNCIL ACT of 18 December 1997, OJ C 024 23 January 1998.

⁴³ [OJ C 197 of 12 July 2000.](#)

In Europe, governmental forensic laboratories routinely perform thousands of casework investigations, i.e. investigations performed in connection with individual criminal investigations in the various fields of forensic science every year. Besides the casework, the laboratory's work also covers other activities such as research and development, or education and training.

Most forensic laboratories belong to police organisations or are public-sector laboratories co-operating closely with law-enforcement authorities.

Since the early 1990's the main European forensic laboratories exchange knowledge within the *European Network of Forensic Science Institutes* (ENFSI). Currently, ENFSI has 49 laboratories from 33 countries as members. ENFSI's Constitution states as its aim "*to ensure that the quality of development and delivery of forensic science throughout Europe is at the forefront of the world*". ENFSI achieves its goals through meetings and the work of the 15 Expert Working Groups dealing with all aspects of the various forensic expert fields.

In recent years the forensic laboratories of the Member States of the European Union have considerably increased - within ENFSI - the co-operation between themselves as well as with forensic laboratories of other European countries.

In most countries, including the EU Member States, only few formal requirements regarding quality standards apply to forensic laboratories. This contrasts sharply with the situation in the food and beverages sector, the control of meat, the admission of new medicines, drinking water, etc. In all these areas formal bodies are responsible for verifying that standards of quality are upheld so that the results of laboratory tests are beyond any reasonable doubt and can be accepted as the basis for usually far-reaching decisions.

A first essential step to improve the quality level of forensic laboratories in the EU is to demand concrete quality requirements. Since the 1980s a generally accepted way to improve the quality of a given laboratory is to demand a generally recognised standard as the basis of its quality-assurance system. Such standards have existed for many years and comprise all technical and organisational aspects which are necessary to guarantee a certain minimum level of quality. The standards which are recommended for the forensic science laboratories are NEN-EN-ISO/IEC 17025, a standard which is not specific for forensic laboratories, and ILAC-G19:2002, which explains 17025 with reference to forensic laboratories. Such an approach is far more efficient and effective than a rigid harmonisation of methods.

The introduction of a quality assurance system is costly and time-consuming. It is therefore reasonable that laboratories have an acceptable time period to comply with these standards. Parallel to this process of implementing an (accredited) quality assurance system by the forensic laboratories, the police and judicial authorities should be stimulated to cooperate only with 'accredited' laboratories.

Until now, only 6 ENFSI member laboratories (all from EU Member States) have a formal recognised quality assurance system based on the two above-mentioned standards. A first essential step in raising the quality of forensic laboratories throughout the Union is therefore that all forensic laboratories in the EU adopt a quality assurance system based on these two standards and that these are recognised

by their national accreditation body (under the assumption that this national body is part of the international accreditation and certification circuit).

ENFSI has developed into a useful co-operation body for forensic science in the Union. Since it comprises also members which are not part of the European Union, it is not possible for the EU to use ENFSI as an official body representing its forensic science interests. It would therefore be advisable for ENFSI members of the European Union to constitute a formal sub-group within ENFSI, with which the European Union could communicate formally.

At EU level, only two instruments exist relating to forensic science: the Council Resolution of 9 June of 1997 on the exchange of DNA analysis results⁴⁴ and the Council Resolution of 25 June 2001 on the same subject⁴⁵. These two instruments are not legally binding. Several projects co-financed under the OISIN program aimed at setting common quality standards for forensic laboratories. The results of these studies could be useful at EU level. The Commission proposes to compile these results and present them to the Police Co-operation Working Group of the Council for discussion and further work.

2.1.6. *Other subjects of police co-operation*

2.1.6.1. Terrorism

The need to combat terrorism is mentioned, in general terms, in article 29 TEU. Terrorism is a specific form of serious crime. This Communication is not intended to deal with individual crime phenomena. However, since the events of 11 September 2001 and 11 March 2004, the fight against international terrorism has received the highest political attention and the Union has taken many initiatives, including some in the field of police co-operation, to enhance the effectiveness of the Member States' law-enforcement services in the fight against terrorism. A Communication on police co-operation would therefore not be complete without a brief analysis of co-operation in this particular area.

Countries' counter-terrorism activities are mainly based on co-operation between intelligence services, police services and judicial authorities. Member States that traditionally have been confronted with internal terrorist threats have developed intelligence services within the police which are at the forefront of the fight against terrorism. In these countries, the intelligence services within the police usually deal with terrorist threats, while the traditional intelligence services direct their attention more to external threats to national security. In Member States that do not have a history of domestic terrorism, the responsibility for the collection, analysis and diffusion of intelligence in the fight against terrorism is the responsibility of the security and intelligence services.

Thus, two different concepts of co-operation can be distinguished in the Union, which determine to a large extent the capacity of the institutional structures to manage co-operation to combat terrorism effectively: one between the police

⁴⁴ OJ C 193 of 24 June 1997.

⁴⁵ OJ C 187 of 03 July 2001.

services and one between the security/intelligence services. The intelligence services of the Member States have co-operated in the fight against terrorism for considerable time within the informal framework of the so-called 'Club of Bern', where some other European countries participate as well. This co-operation is based on mutual trust and flexibility. After 11 September 2001, Member States' intelligence services, following the conclusions of the European Council of 21 September 2001, have stepped up their counter- co-ordination within the "Counter-terrorism group" (CTG) of the Club of Bern, which brings together the counterterrorist experts of the intelligence services. Police services do not participate in this group.

Institutional counter-terrorism co-operation in the Union within the third pillar is coordinated in the Terrorism Working Group of the Council (TWG). Some delegations to the TWG represent the "police intelligence services", others the security/intelligence services, and others both. This heterogeneous composition of delegations is one factor hindering co-operation, because of the lack of trust between the different services. Europol also participates in the group.

As regards Europol's role in EU counter-terrorism policy, Member States' police and intelligence services often still consider that Europol lacks the capacity to exercise leadership in this field and that its system of exchange of information is too rigid. The intelligence services in particular remain reluctant to accept Europol as a partner. The provision by the Member States of all operational information and intelligence to Europol is one of the measures identified by the Commission in its contribution to the European Council meeting dedicated to improving counter-terrorism co-operation in the EU⁴⁶, which was held in Brussels on 19 March 2004, as a response to the terrorist attacks in Madrid a week before.

Having said this, however, it must be recognized that co-operation in the Union regarding counter-terrorism improved after 11 September. On 20 September 2001 a special meeting of the JHA Council took place. It adopted a long list of important measures to enhance the Union's effectiveness to deal with the problem, aiming at improving judicial co-operation, police co-operation, combating financing of terrorism, border checks, aviation and maritime security and co-operation with the US (that led to agreements between Europol and the American police services on exchange of personal data or of liaison officers).

As regards police co-operation good progress was achieved in agreeing concrete measures to improve relations between the police forces, Europol and the intelligence services of the Member States. In this context, it is important to highlight the creation of a team of counter-terrorism experts ('Counter Terrorism Task Force') at Europol; the creation of multinational teams for the collection and exchange of information on terrorists; the meetings of Heads of the counter-terrorist Units and of the police intelligence services, the strengthening of controls at external borders and of safety requirements at airports and on aircraft; and the development of terrorist profiles. In addition, the Task Force of EU Police Chiefs agreed on improvements in information processing and in the co-operation between the intervention units.

⁴⁶ SEC (2004) 348 « Commission paper on terrorism to the Council, providing input for the European Council », 18 March 2004.

In the field of judicial and police co-operation the Council adopted on 13 June 2002 a Framework Decision on the fight against terrorism⁴⁷, which aims at approximating the definition of terrorist offences in all Member States and establishing a common threshold for penalties and sanctions. Another new instrument is the European arrest warrant⁴⁸, whose aim is to facilitate extradition between Member States by replacing existing instruments. It covers, inter alia, the infringements and crimes committed by terrorists. Moreover, in February 2002 Eurojust was created⁴⁹, bringing together prosecutors and magistrates or law-enforcement officials with an equivalent capacity. On 28 November 2002 the Council adopted a decision⁵⁰ establishing a mechanism for evaluating legal systems and their implementation at national level in the fight against terrorism. On 19 December 2002 a Council Decision on the implementation of specific measures for police and judicial co-operation to combat terrorism was adopted⁵¹.

Nevertheless, as the attacks in Madrid made clear, terrorism is still a threat to the security of the EU. As is pointed out in the Commission's response to the European Security Strategy with regard to fighting terrorism⁵², "terrorism poses challenges to the core EU objectives of the promotion of free movement of persons, goods, services and capital and makes evident the intrinsic link between internal and external security". Therefore, effective coordination is essential to more effectively fight terrorism in the EU.

In view of the above, it is essential to improve co-ordination between all the services involved in the fight against terrorism within the Council structures. A first step would be to have all delegations to the TWG include both intelligence services (police and non-police) and strengthening the role of Europol in EU counter-terrorism policy. Later it would be necessary to bring the CTG of the Club of Bern closer to the TWG and COTER. Europol should be transformed into a true center of intelligence including the creation of a common database on terrorism, including persons, incidents, indications and operations, fully complying with the data protection provisions of the Europol Convention. Good progress was recently made, since Europol can assist the multinational *ad hoc* teams for gathering and exchanging information on terrorism and will consequently be granted a connexion to the BDL network, as soon as it satisfies security safeguards and Europol's Convention. The Council Recommendation concerning the constitution of multinational teams to gather information about terrorists⁵³ should be changed into a legally binding instrument.

As is pointed out in the above-mentioned Commission paper on fighting terrorism, there are good arguments to improve the coordination of counter-terrorism activities inside the EU institutions (following the good example of the EU compendium of threat assessments written by TWG and COTER, or common meetings of these two working parties) and to reinforce the role of the Terrorism Working Group in

⁴⁷ Council Framework Decision 2002/475/JHA of 13 June 2002. OJ L 164, 22 June 2002.

⁴⁸ Council Framework Decision 2002/584/JHA of 13 June 2002. OJ L 190, 18 July 2002.

⁴⁹ Council Decision 2002/187/JHA of 28 February 2002. OJ L 063, 06 March 2002.

⁵⁰ Council Decision 2002/996/JHA of 28 November 2002 OJ L 349, 24 December 2002.

⁵¹ Council Decision 2003/48/JHA of 19 December 2003. OJ L 16, 22 January 2003.

⁵² SEC (2004) 332 of 19 March 2004.

⁵³ Recommendation of JAI Council of 13 June 2002.

preparing EU policy-making. Needless to say that all the measures foreseen in this chapter should fully respect existing personal data protection legislation.

2.1.6.2. Other police co-operation subjects

Public order and security of high-level meetings

After the violent demonstrations during the European Councils in Nice and Gothenburg, and especially after the G-8 meeting in Genoa in July 2001, there has been growing concern about the ability of police forces to guarantee public order and security while at the same time respecting fundamental rights. On 13 July 2001 a special Justice and Home Affairs Council met to deal with this issue. A series of measures to prevent violent disturbances during high-level meetings were agreed upon, among them intensified co-operation in the fields of police, exchange of information while respecting the right to protection of personal data, crossing of borders, judicial co-operation, and organisation.

At the same time, the Council underlined the need to guarantee that citizens can enjoy their rights to freely express their opinions and assemble in a peaceful manner, in conditions where there is no threat to their security, that of others or to their property. It recommended a constructive dialogue between organisers of public demonstrations and the authorities of the host country, and close international contacts to ensure that legitimate demonstrations are not exploited or abused by violent groups.

The Task Force of EU Police Chiefs suggested to the Council to create a group of experts charged with writing a common manual for use by police and authorities while preparing high-level meetings. As a result of the group's work, a Handbook has been drawn up.

The Council has also adopted a series of instruments to enhance police co-operation in other areas. Some of these are legally binding, as for examples the Council Decision of 25 April 2002 concerning security in connection with football matches with an international dimension⁵⁴, the Council Decision of 13 June 2002, creating a network of national contact points in respect of persons responsible for genocide, war crimes and crimes against humanity⁵⁵ and the Council Decision of 28 November 2002 creating a network for the protection of public figures⁵⁶.

However, a considerable number of documents adopted are of a non-binding nature. The proliferation of non-binding instruments is one of the factors affecting police co-operation in the EU, which will be examined more closely in the next chapter.

2.1.6.3. Article 32 TEU

This Article stipulates that "The Council shall lay down the conditions and limitations under which the competent authorities referred to in Articles 30 and 31

⁵⁴ JHA/348/2002 of 25 April 2002, OJ L 121 of 08 May 2002.

⁵⁵ 2002/494/JHA of 13 June 2002, OJ L167 of 26 June 2002.

⁵⁶ 2002/956/JHA of 28 November 2002, JO L333 of 10 December 2002.

may operate in the territory of another Member State in liaison and in agreement with the authorities of that State." The Vienna Action Plan mentions the Article as an area where progress should be realised within two years after the entry into force of the TEU, "taking into account the Schengen acquis." It stresses that the creation of a collective framework for this type of operation is one of the priorities for police co-operation, adding that the framework can be a flexible one.

Until now Article 32 has not been used as a legal basis for legislative proposals or initiatives. However, decisions have been adopted in the spirit of this article, for example the Convention on Mutual Legal Assistance in Criminal Matters of 2000 and the Framework Decision on Joint Investigative Teams of 2002⁵⁷. Both lay down new conditions and limitations under which the police can operate on the territory of another Member State. Additional examples are the initiatives taken to extend the use and scope of articles 40-43 of the Schengen Convention (cross-border surveillance and hot pursuit). Also, a number of bilateral agreements concluded in the context of Schengen extend the competencies of officials to operate on the territory of the other Member State.

Because of its potential importance for operational police co-operation and since the Vienna Action Plan mentions it as a top priority, the Commission considers it essential that the possible ways of implementing this article be discussed in the Council.

Concrete examples of the need to set clear conditions for the operation of Member States' services on the territory of another Member State are the discussions regarding better co-operation between the police intervention units and also between the intervention units for nuclear biological, nuclear, chemical and radiological protection. Future crisis situations may require these services from one Member State to operate and possibly use force on the territory of another Member State.

This need also exists from the perspective of improving cross-border co-operation in Member States' regions sharing common borders (see also on Schengen co-operation). These discussions could usefully include the possibility of a common model for cross-border co-operation, based on the positive experience which some Member States have gained, as well as on existing bilateral police co-operation agreements.

In this context, a recently negotiated bilateral police co-operation agreement between Austria and Germany must be mentioned, since it represents an important step forward compared with existing ones. Among its provisions, this agreement includes the possibility for national officials to be subordinated to the authorities of the other Member State, for the exercise of certain coercive powers on the territory of the other Member State, for participation in activities for the protection of persons and property on the territory of the other Member State, for the transfer and matching of DNA profiles, for simplification and extension of cross-border surveillance and hot pursuit, and for allowing surveillance also for the protection of persons and property. In the view of the Commission, this a promising example of how EU police co-operation should develop.

⁵⁷ Framework Decision 2002/465/JHA of 13 June 2002. OJ L 162 of 20 June 2002.

2.2. Customs co-operation

Together with police co-operation, customs co-operation was introduced into the inter-governmental part of the Maastricht Treaty on European Union in 1992. Article 29 of the TEU provides for closer co-operation between police forces, customs authorities, and other competent authorities in the Member States. Although the Tampere conclusions do not expressly refer to customs co-operation, many of the issues relate specifically to matters of customs competence. Member States' customs authorities play a vital role in fighting serious international crime. Examples are the fight against the illicit traffic in drugs, weapons, munitions, explosive materials, the theft of cultural goods, the protection of national treasures possessing artistic, historic or archaeological value (article 30 of TEC), dangerous and toxic waste, nuclear material, or materials or equipment intended for the manufacture of atomic, biological and/or chemical weapons.

Unlike in the case of police co-operation, there is an important first-pillar element in customs co-operation, which is reflected in the inclusion of Article 135 in the Treaty establishing the European Community. When looking at customs co-operation in the European Union, therefore, it is important to take into account the varied responsibilities of customs under the different pillars.

More specific aims in relation to customs co-operation are set out in the Vienna Action Plan. The measures to be taken are the ratification of the Convention on Mutual Assistance and Co-operation between the Member States (Naples II)⁵⁸ and the Convention on the use of Information Technology for customs purposes (CIS)⁵⁹. Although progress has been made on both Conventions, some Member States still have to complete their ratification procedures.

Of those Member States who have ratified the Conventions (currently 13 have ratified the CIS Convention, and 10 Naples II), none currently apply the special forms of co-operation provided for in Naples II or provide data for the third-pillar CIS database, in spite of the fact that those who have ratified could provisionally apply these Conventions. It is therefore too early to evaluate whether the application of these Conventions is improving mutual assistance and co-operation between the Member States' law-enforcement agencies.

There are many ways in which customs contribute to the fight against illicit trade. One of these is by sharing information and intelligence. It is in this area that the CIS Convention and the third-pillar database will facilitate exchange and dissemination of information in order to prevent or detect infringements of national laws and requests for action. The Commission (OLAF), with the support of the Member States, has made good progress with the technical development of the database, which became fully operational on 24 March 2003.

The third-pillar CIS is to be further expanded by the addition of the Customs Files Identification Database (FIDE). This will provide valuable information to customs authorities on natural or legal persons who have committed, or are being investigated

⁵⁸ OJ C 24, 23 January 1998.

⁵⁹ OJ C 316, 27 November 1995.

for serious contraventions of customs legislation. The necessary amending Protocol to the CIS Convention was adopted by the Council on 8 May 2003⁶⁰. The Commission (OLAF) has committed resources for the development of FIDE and started a feasibility study in 2003. The technical development will commence during 2004 so it will not be too long before this valuable addition to the third-pillar CIS will be operational.

The Naples II Convention was signed on 18 December 1997. The purpose of the Convention is to improve the effectiveness of customs co-operation and law enforcement in the European Union, by preventing and detecting infringements of national customs provisions and prosecuting and punishing infringements of Community and national customs provisions. The Convention provides for specific forms of co-operation such as hot pursuit, cross-border surveillance, controlled deliveries, covert investigations, and joint special investigation teams. These special measures were considered to be essential following completion of the single market and the abolition of routine customs controls at the internal borders of the European Union.

Although the text of the Convention refers specifically to 'customs administrations' these are defined in Article 4(7) as being Member States' customs authorities as well as other authorities with jurisdiction for implementing the provisions of the Convention. The Convention therefore provides for co-operation between law-enforcement agencies with the relevant powers to act in relation to customs infringements as defined in Articles 4(1) and 4(2).

To assist with the practical application of the Convention, a handbook was prepared in 2002 by the Customs Co-operation Working Group (CCWG) of the Council. This handbook will assist practitioners by providing an explanation of the provisions within the Convention and how they should be applied.

Member States have also initiated some bilateral actions. As was explained in chapter 2.1.1, joint customs/gendarmerie/police operation centres have been established under article 39 of the Schengen Convention. These common centres have been established to promote closer work and exchange of information at the border between the relevant agencies in relation to cross-border crime, smuggling, and illegal immigration. These centres are key to improved co-operation and the development of mutual knowledge and understanding between the law-enforcement agencies concerned.

Every year the Member States carry out at least four joint customs surveillance operations, often with the support of the OISIN, and, from 2003 on, the AGIS programs. In recent years these have targeted the smuggling of hard drugs, cigarettes, alcohol, and the movement of illicit cash, with the aim of combating the activities of criminal groups.

These operations are extremely valuable, maintain pressure on criminal organisations, produce good results in terms of seizures and increased intelligence, while publicising the role of customs in protecting society and contributing to an area

⁶⁰ OJ C 139, 13 June 2003.

of freedom, justice, and security. They also improve the working relationship between customs authorities, not only by virtue of their working together, but by further enhancing special forms of cooperation, risk profiling, threat assessments, targeting, and information exchange. The reports of the operations also include recommendations for improvement. It is apparent, however, that during the planning of operations previous recommendations have not always been taken into account.

In recent years, particular attention has been given to the involvement of the accession and candidate countries to assist with their future accession to the EU. Europol has been involved in several operations by providing premises and equipment for meetings and operational control centres as well as assistance with the analysis of results. In addition, the Commission (OLAF) has provided valuable technical support to the operations via the AFIS (Anti Fraud Information System) infrastructure to ensure the confidential exchange of information, including physical support to the operational co-ordination unit (OCU). The recent development of a virtual OCU application by the Commission will further assist these operations by reducing costs and ensuring participation in the activities of the OCU by all participating countries without the need for a physical presence. Europol's participation has proved useful and should be further developed in the future, particularly in relation to crime analysis. Europol's assistance in the planning and preparation of operations is also another area to be developed, since it could provide for better targeting and ensure that current trends and threats are taken into account.

Since entry into force of the TEU, Member States' customs administrations have continued to take measures to improve co-operation between themselves. They have established a network of operational contact points to develop further the exchange of information and mutual assistance. This co-operation will be further improved once the CIS and Naples II Conventions have been ratified and are fully applied in all Member States. The joint operations have continued to provide good results, although there is a need to ensure that previous recommendations are taken into account. It is desirable that other law-enforcement agencies and Europol become fully involved in future operations with the aim of promoting closer co-operation.

In July 2003 the Commission submitted to the European Parliament and the Council a Communication on the role of customs in the management of external borders⁶¹. This Communication covers both first and third-pillar customs co-operation. It suggests rationalisation of the work involved in checks at external borders by focusing on priority checks, establishing a common approach to risk management, promoting cooperation and rapid exchange of information between all services responsible for security, or possible action in relation to the availability of equipment and the need for equivalent levels of control along the EU's external border. The ECOFIN Council of 4 November 2003 called on the Member States and the Commission to work towards an integrated management of the external borders to assure a coordinated approach between the services responsible for the control of persons and those responsible for the control of goods.

⁶¹ "Communication from the Commission to the European Parliament and the Council on the role of customs in the integrated management of external borders." COM(2003) 452 final of 24 July 2003.

Within the Council, the CCWP has developed a multi-presidency program (18 months) for customs co-operation in the third pillar. In relation to this program, on 2 October 2003 the Council adopted a Resolution calling for a strategy regarding customs co-operation⁶². In it, the Council recognises that an integrated approach towards combating crime, including a contribution to the fight against terrorism, inside an area of freedom, security and justice should include, besides customs cooperation, close and efficient multilateral cooperation between customs and other law enforcement authorities as well as other European bodies and Institutions such as Europol, Eurojust and the Commission (OLAF).

The strategy and related action plan were agreed by the CCWP in December 2003 and implementation will commence during the Irish Presidency of the Council. These instruments provide the framework for enhanced co-operation between customs authorities for the next few years. The strategy includes a number of measures suggested by the Commission to further enhance the effectiveness of EU customs co-operation for example by creating a permanent Operational Co-ordination Unit (OCU) sharing liaison officers, establishing EU-wide threat assessments and common risk profiles, common training, and training together with police where relevant, and possible action in relation to the availability of equipment and the need for an equivalent level of control at the EU external border. It remains essential that all Member States immediately and fully ratify the Naples II Convention.

It is important that in the above areas close links are maintained with the relevant work undertaken in first pillar customs co-operation.

2.3. The OISIN and AGIS programs as instruments to promote police and customs co-operation in the EU.

On 20 December 1996, the Council adopted a Joint Action establishing a common program for the exchange and training of, and co-operation between law-enforcement authorities (the OISIN Programme⁶³). A second phase of the program, OISIN II, was established for the period 2001 to 2002 by the Council Decision of 28 June 2001⁶⁴.

The OISIN II program was replaced, along with the other programs managed by the Commission under Title VI⁶⁵, by the AGIS program, established by the Council Decision of 22 July 2002⁶⁶ with the aim of promoting police and judicial co-operation in criminal matters and to support the efforts of practitioners to develop European policy in this area. In the period between 1999 and 2002, the Commission supported 192 projects in the areas of police and customs co-operation through the OISIN and OISIN II programs⁶⁷.

⁶² OJ C 247, 15 October 2003.

⁶³ 97/12/JHA. OJ L 007 of 10 January 1997

⁶⁴ 2001/513/JHA OJ L 186 of 07 July 2001.

⁶⁵ Grotius II Criminal, Falcone, Hippokrates and Stop II.

⁶⁶ 2002/630/JHA, OJ L 203 of 01 August 2002.

⁶⁷ See report of the OISIN II program 2001 to the European Parliament and the Council, SEC(2003) 316 of 14 March 2003.

Examples of successful projects are operations Viking and TRACK, which targeted, respectively, shipments of drugs and vehicle theft, as well as several projects aimed at establishing common quality standards for crime scene management for forensic technicians. The OISIN programs have proved a valuable instrument in promoting concrete police and customs co-operation in the EU and also with the accession and candidate countries. For every Euro invested, the programs generated, on average, almost 2 Euros in terms of co-operation among the law-enforcement services of the Member States and accession and candidate countries.

As to the AGIS program, during the first call for proposals launched in early 2003, 216 proposals were received, of which 99 were police and customs co-operation projects. In total, the Commission proposed to co-finance 148 projects this year, of which 77 are police and customs co-operation projects.

It is essential that projects co-financed by AGIS contribute to solving objective problems in priority areas of EU police and customs co-operation. Member States and the Commission should work together more closely to achieve greater effectiveness of AGIS funding in this field. The Commission will therefore propose that from 2004 on, the AGIS work program focuses, as regards co-operation between police and customs services, on the priorities identified in this Communication. Greater coordination at the level of the Member States would be desirable in order to make project proposals by the police and customs services more focused on the priorities reflected in the AGIS work program. The Commission will also examine to what extent it is possible to further simplify the application procedures, as well as the speeding up of payments.

Finally, the Commission will draw up a catalogue of the reports of the projects co-financed by the OISIN and OISIN II programs through the years. This will enable a clearer view of the areas in which police co-operation is more or less advanced, as well as areas for future co-operation.

II PROPOSALS FOR IMPROVEMENTS

1. FACTORS AFFECTING POLICE AND CUSTOMS CO-OPERATION

1.1. Nature of police work

The enforcement of the law and the maintenance of public order and security by police go to the heart of what constitutes a sovereign state, namely the monopoly on the use of force, such as the right to arrest, interrogate and detain persons, and use firearms. From a national perspective, it is therefore understandable that countries are reluctant to participate in international arrangements which encroach on national sovereignty. Such reluctance on the part of national authorities is present in particular with relation to arrangements enabling the police of other countries or representatives of an international body to perform police functions on their territory, even if, objectively, their presence is necessary for a more effective fight against crime.

In addition to those mentioned above, three other factors hindering international police co-operation can be identified: a natural reluctance to share information, the co-existence in Member States of different police services and the fact that further development of police co-operation is closely linked to the improvement of judicial co-operation in criminal matters.

Gathering and processing information is essential in police work, in particular to prevent, detect and investigate crime. The success of investigations and the subsequent prosecution of crimes depend on the quality of the information gathered, on its analysis, and especially on protecting it from leakage to unauthorised persons or organisations. This explains a natural reluctance to share information, in particular with services or persons with whom no relation of mutual trust and confidence exists.

Such reluctance is not only evident in international contacts, but also between different police forces within countries (and sometimes even within one same force). This is why informal contacts and liaison officers are still being used for international exchanges. Mutual trust and confidence will gradually grow over time as a result of continuing and deepening co-operation within the formal bodies established by the Union, such as Council working groups, Europol, or the Task Force of Police Chiefs. This natural process is very slow in developing, however. It is therefore necessary to find ways to achieve progress more rapidly.

Effective ways to build up a culture of trust and co-operation are the training activities of CEPOL and the Europol awareness program, which should be stepped up. The extension of cross-border co-operation structures to all internal border regions in the Union should greatly contribute to building up mutual confidence and trust.

International co-operation is further complicated by the co-existence in many countries of different police bodies, e.g. civil-status police, military-status police, national, regional, local police or a fully regionalised police. From an organisational perspective, it is understandable that the co-existence of several separate police corporations complicates co-operation, including the sharing of information. Member

States have therefore usually designated one service which is competent for all international contacts. It is essential that each Member State organizes its internal coordination in such a manner that all relevant services will be able to participate in international co-operation.

To improve the international exchange of information it is necessary for Member States to have certain structures in place both within the country and at international level. Within the country an effective electronic information exchange system should exist to enable the rapid and secure exchange of information between all relevant services. It should include a criminal analysis capacity at national level to which all services can contribute and from which they receive results.

Concerning the international exchange of information, it is essential that central national contact points be designated (CNCP) in all Member States. This was already recommended in the Action Plan to Combat Organised Crime of 1997⁶⁸ and stressed again in the final report on the second round of mutual evaluations⁶⁹, which under point 5.4.1 concluded that "(i)nternational co-operation was still not optimised, as not all Member States had established a central contact point. Particularly at the beginning of an investigation, the multitude of law-enforcement agencies throughout the Union can render it into a haphazard task to identify the appropriate co-operation partner." The CNCPs should bring together, ideally in one office, the Europol National Units, the Sirene offices, customs, the Interpol NCBs and representatives from the judicial authorities. Those Member States which have established such contact points are witnessing clear improvements in communication between the services concerned and in the exchange of information with other countries.

The third factor relates to international police co-operation in concrete investigations. Most investigative techniques used by the police, e.g. surveillance, interception, controlled deliveries, covert operations, etc., require the prior authorisation of the judicial authorities in accordance with national legislation regarding criminal procedures. The Convention on Mutual Legal Assistance in Criminal Matters of 2000 aims at simplifying the general judicial co-operation procedures, and facilitating co-operation concerning special investigative techniques.

The Convention has thus far been ratified by only three Member States. This situation is extremely worrisome, since it prevents the Union from using this potentially important instrument. Moreover, there are those who feel that the provisions of the Convention on a number of investigative techniques will probably not result in real progress compared with currently existing co-operation, since their application is usually left to national legislation. The Commission therefore considers it necessary to examine to what extent it might be necessary to agree on a text which would bring substantial progress in judicial co-operation regarding these techniques.

1.2. Lack of strategic approach

One of the main problems in police and customs co-operation in the EU has been an apparent lack of strategic approach. The Commission Scoreboard only keeps track of

⁶⁸ Council Decision of 28 April 1997, OJ C 251/01.

⁶⁹ Council document 9615/1/03 REV 1 LIMITE CRIMORG 43 of 30 June 2003.

the development of those measures which have been agreed upon. But the fact that the right of initiative remains with the Member States means that, in practice, every Council Presidency defines a set of priorities according to its own priorities. The fact that unanimity is still the rule in decision making in this area slows progress even more.

The Convention on the future of Europe has proposed improved decision-making mechanisms, as well as amendments with regard to the right of initiative. These are considered below (see point 1.4). But even if the Intergovernmental Conference (IGC) in the end agrees on these new rules, it will take some years until the IGC's decisions have been ratified by all Member States. It is therefore essential that within the existing decision-making procedures, working methods are agreed to enable concrete and substantial progress between now and the end of the ratification process.

One major improvement would be to define a number of concrete priorities for each year, on the basis of a multi-annual work-program. The Council Decision of 22 July 2002 requires the General Affairs and External Relations Council (GARC) to recommend to the European Council for adoption a multi-annual strategic program for the three years to come.⁷⁰ The programs should be based on a joint proposal by the Council Presidencies concerned, in consultation with the Commission. In the light of the multi-annual strategic program the two Council Presidencies due to hold office in the following year should jointly submit a draft annual operational program of Council activities during that year. The draft program is to be submitted in December every year to the GARC.

As is currently the case, the Scoreboard will remain the instrument to monitor the progress being realised in the area of police and customs cooperation. The need for an objective priority setting and work-planning as regards police co-operation has been taken up by a number of Member States recently. For instance Belgium, Luxembourg and the Netherlands have drawn up a proposal for concrete procedures for objective priority setting and the definition of annual and multi-annual work programs. Another aim of the paper is to ensure effective operational police co-operation in the Union and to integrate such co-operation into the formal police co-operation. The subject of operational co-operation is discussed in section 2.1.3 of this Communication.

1.3. Proliferation of non-binding instruments

Another problem in the third pillar is the proliferation of non-binding instruments approved or taken note of by the Council, such as recommendations or conclusions. There is limited added value in this type of instruments, which take up valuable time and resources and tend to lead to confusion, since different interpretations arise as to the obligation to implement them. In the view of the Commission, if Member States consider a given subject important enough to be discussed at the level of the Council, then discussions should result in measures which are effectively implemented by all.

⁷⁰ OJ L 230 of 28 August 2002.

1.4. Decision-making procedures in the Third Pillar

A main explanation for the slow progress in police and customs co-operation over the past few years can be found in the current decision-making rules in the Union regarding the subjects mentioned in Title VI TEU. Article 34(2) stipulates that the Council can only decide by unanimity and that the right of legislative initiative is shared between all fifteen Member States and the Commission.

This situation leads, at best, to long and slow decision making at all levels in the Council structures and bodies such as Europol, CEPOL and the Task Force of Police Chiefs. At worst, it leads to no decisions being taken at all, or to instruments being adopted which are not legally binding, such as Council Conclusions or Recommendations. Council Presidencies want to show that their tenure has led to visible progress in co-operation in third-pillar matters.

The possibility offered by Article 34(2)(c) to adopt, by qualified majority, measures necessary to implement Council Decisions that promote co-operation has never been used. In view of improving co-operation it is important that better use is made of the possibilities offered by this article.

The question of voting procedures and the right of initiative regarding subjects currently covered by Title VI was discussed by the Convention. It is proposed that the right of initiative lies with the Commission and a group representing at least 25% of all Member States. The draft Constitutional Treaty offers a considerable improvement in the decision-making procedure for police and customs co-operation. Whilst decisions on operational cooperation and decisions on operation by one Member State in the territory of another would remain subject to unanimity, decisions relating to the framework and mechanisms for cooperation (e.g. Europol) would be taken by qualified majority and co-decision. The Commission believes that the balance achieved in the draft Constitutional Treaty reflects well the respective competences of the Member States and the Union in this area.

1.5. Insufficient implementation of legal instruments adopted by the Council

Progress in the area of police and customs co-operation is affected negatively by the slow and insufficient implementation of legal instruments adopted by the Council. Examples of this problem are the Naples II Convention of 1997 and the Protocol extending Europol's competence to Money Laundering in general of September 2000. Neither has been ratified by all Member States.

In view of the general state of affairs regarding implementation, the Laeken European Council of December 2001 reaffirmed the need to transpose quickly into national law decisions taken by the Union. It also stressed the importance of ratifying as soon as possible the Conventions signed since the entry into force of the Maastricht Treaty. This call, however, does not seem to have had much concrete effect on the justice and home affairs area.

Although there exist different mechanisms to systematically examine the state of implementation by the Member States of the legally binding instruments adopted by the Council, such as Framework Decisions, there is no standard mechanism to enforce their implementation. Through its abolition of the pillar structure, the draft

Constitutional Treaty implies that, in future, the usual rules for infringement procedures would apply to legal instruments regarding matters which are currently in the third-pillar area. In the meantime, the Commission examines implementation by the Member States on a systematic basis.

1.6. Lack of empirical research on police and customs co-operation

The development of effective public policy in a given area is facilitated greatly if it can be based on an objective analysis of problems and possible solutions, as well as on statistics which enable comparisons between countries. This is even more true for complex and sensitive policy areas such as police and customs co-operation. Independent scientific experts have an important role to play in providing such analysis.

Current scientific research in the EU regarding police and customs co-operation has a number of shortcomings. There is not much research done as such on this subject and the research which does exist is often limited to a normative analysis of treaties, institutions, competencies and procedures, but does not sufficiently cover the real functioning of existing co-operation. Conversely, research may often focus on certain aspects of police co-operation and not offer adequate insight into the organisation and functioning of the larger whole. Most research does not cover the concrete problems confronting the Union in the area of cross-border crime.

Furthermore, research usually remains limited to an analysis of the methods of co-operation and does not pay adequate attention to its necessary incorporation into the police and judicial systems of the Member States. Little research has been done into the investments necessary for such co-operation and the possible adaptation of the national systems to it. Finally, there is a lack of statistical data on the main crime phenomena in the Member States. Such data is necessary to identify differences in the occurrence and seriousness of these phenomena. Their availability would enable the development of effective policy measures at EU level.

A positive development regarding research on justice and home affairs matters in the Union is the availability, in the context of the Sixth Framework Program for Research and Technological Development⁷¹, of funds for research projects dealing, inter alia, with the fight against crime. A new call for proposals for project bids under this program will be published in October 2004.

The Commission considers it essential that the knowledge base for EU police and customs co-operation be improved considerably over the next few years. A first step would be to obtain a clear picture of the demand for research on the part of the EU law-enforcement community on the one hand and of the potential offer from the research community on the other. The Commission considers that CEPOL is ideally situated to carry out such a task at EU level.

Adequate funding needs to be made available for research. This is a shared responsibility of the Member States and the Union. The Commission proposes to set aside funds in the context of the AGIS program for research on the priority subjects

⁷¹ Council Decision of 30 September 2002 (2002/834/EC), OJ L294/1 of 29 October 2003.

identified in this Communication. At the same time, it will continue to give its input relating to justice and home affairs matters in the context of the Sixth Framework Program. As regards the longer term, it will begin examining the possible need for a separate research programme in the field of justice and home affairs.

1.7. The nature of co-operation between police and customs

Article 29 of the TEU provides for closer co-operation between police forces, customs authorities, and other competent authorities in the Member States.

As regards co-operation between customs and police this appears to work in different ways in Member States at the international level; however there is evidence that at national level such co-operation does not exist in all Member States. This is particularly evident in the area of drugs. Some Member States have initiated closer working arrangements between police and customs services regarding the fight against drugs, as is required by the Council Resolution of 29 November 1996⁷². In it; the Council urged Member States to establish formal agreements or other arrangements at national level which take account of the broad guidelines laid down. These provisions include the precise delineation of, and respect for, the competencies of each of the two services, and the exchange and sharing of relevant intelligence information.

Other areas where co-operation between customs and other law-enforcement agencies is being enhanced are the fight against terrorism and the security of the international supply chain. This stepped-up co-operation follows in the wake of recent terrorist activities throughout the world. It will hopefully assist in the identification of known or suspected terrorists and provide increased security for the movement of goods.

In certain Member States, co-operation has been developed closely with respect for the specific expertise of the actors, for example co-operation and mutual assistance at border areas, multi-agency enforcement activity, common law-enforcement actions, improved enforcement capability, joint intelligence cells for exchanging information and intelligence to the benefit of all participating bodies.

Having taken account of the current situation and having consulted the Member States, the Commission is of the opinion that more effective co-ordination and communication between the respective police and customs services should be established in the Member States and within the working structures of the Council.

1.8. Third-pillar databases and communication systems

In the past few years a number of databases and communication systems have been or are being developed in the Union for use by law-enforcement services in the Member States. All of these are mentioned in the relevant sections of this Communication. The main examples are the Europol Information System, the Schengen Information System, the Customs Information System (both first and third pillar), the Customs Files Identification Database and the Europol virtual private

⁷² OJ C 375, 12 December 1996.

network. There is a potential risk duplication between at least some of these systems and there could also be questions as to the required interoperability.

In order to enable the Council to have a clearer view of this highly technical and complex issue and to be able to take the necessary decisions, early in 2002 the Commission submitted a room document to the Article 36 Committee, describing in summary form the purpose and functioning of each of the data bases and communication systems. This document became the basis of the work of the ad-hoc Group which the Article 36 Committee set up in November of 2002 to study the issue and come up with proposals.

The ad-hoc group, which comprised the Presidency, the Commission, EUROPOL, EUROJUST, the Joint Supervisory Authority for data protection and the Council General Secretariat, concluded that the possibility for overlap of data was limited and had so far not presented problems⁷³. They presented three possible options for the long-term future of law-enforcement systems:

- To merge the existing systems in a single “Union Information System”, which would evolve to encompass future system needs in all relevant business areas;
- to keep the systems independent and allow creation of new systems on the basis of future business needs;
- to investigate and implement the harmonisation of the data formats and their respective access rules between the various systems, while allowing current systems to evolve to provide interoperability⁷⁴ between them (middle-ground solution).

They recommended that, in order to establish the exact technical, financial and legal implications of the three options, a further detailed study should be undertaken. It was also suggested that in the meantime, regular meetings of the representatives of the organisations responsible for the aforementioned information systems should take place, in order to identify problems and to exchange best practices.

The Article 36 Committee endorsed the report and agreed that further work was necessary. The Commission considers that the most viable option in the short term would be the middle-ground solution. In the longer term the creation of a single EU system should be considered.

The Commission considers that this matter should be taken forward urgently, so as to ensure that final recommendations and decisions on the long-term future of EU law-enforcement information systems can be made as quickly as possible.

⁷³ 8857/03 JAI 118 of 06 May 2003.

⁷⁴ Identification of data categories (business objects) and standardisation of data format to be exchanged; harmonisation on the security rules applicable to data access and manipulation; development of standard interfaces allowing the interconnection of systems without human intervention.

2. CONCLUSIONS AND RECOMMENDATIONS

On the basis of the obligations mentioned in the TEU, the Schengen Convention, the Vienna Action Plan and the Tampere European Council, the Union has taken a considerable number of measures to improve police and customs co-operation since the entry into force of the TEU in May 1999. These have contributed to making the Union more effective in the fight against crime and thereby contributed to achieving the objective stated in article 29 TEU.

Formally speaking, all measures called for by the Tampere Conclusions in the field of police co-operation have been implemented (i.e. the establishment of a Task Force of EU Police Chiefs and a European Police College). As regards the Vienna Action Plan, a number of important measures have still not been implemented, even some which should have been within two years after the entry into force of the TEU. Also, a number of provisions of the TEU, including the Schengen Protocol, still have to be implemented (e.g. Articles 30.1.d and 32 TEU; Articles 44 and 45 of Schengen).

The Commission therefore considers that the measures described below for the main policy areas are essential to concretely improve and speed up police and customs co-operation in the EU. All of them could be implemented within the existing Treaty provisions, with the exception of the possible attribution of certain investigative competences to Europol and a general reshaping of this body, where the Convention has proposed a series of amendments which the Commission supports. The recast of the Europol Convention is an option to be carefully assessed.

These measures concern both content of policies and improvement in working methods. As regards the latter category, as an overarching measure, multi-annual and annual work programs should be developed for the field of police and customs co-operation by the Council and the Commission working together. Such programs should contain, inter alia, the priority measures identified in this Communication. Where appropriate, they should be coordinated with first-pillar initiatives. The Council should adopt legally binding instruments pursuant article 34 (2) TEU instead of non-binding measures which bring little added value. The Commission will prepare a first draft of this work program. Member States should improve the implementation of both binding and non-binding instruments. A general monitoring system should be developed to monitor and report on implementation.

As far as concrete measures in policy areas are concerned, there are two great axes around which measures to improve police and customs co-operation in the EU can be grouped: the first regards the flow of information, and the second actual cross-border co-operation.

2.1. Improving the flow of information

A necessary condition for effective co-operation between Member States is effective cooperation between the various police and other law-enforcement services within Member States. A good instrument to achieve this is the designation of central national contact points (CNCP) for the international exchange of information (already recommended in the Action Plan to Combat Organised Crime of 1997). The CNCPs should bring together, ideally in one office, the Europol National Units, the Sirene offices, customs, the Interpol NCBs and representatives from the judicial

authorities. Finally, mechanisms should be put in place for the regular assessment of whether Member States are implementing the instruments satisfactorily, as was established already in the Joint Action of 05 December 1997⁷⁵.

The *interoperability of the different databases and communication systems*, both police and customs, used by Member States' law enforcement services should be ensured. At the EU institutional level, mechanisms should be found to promote collaboration and data exchange between OLAF and Europol. The arrangement to cover the exchange of personal data between the two should be concluded. The Commission intends to adopt a Communication on law-enforcement information policy in the near future, with the aim of contributing to develop intelligence-led law enforcement at the EU level.

In order to enhance the effectiveness of Europol, the Commission does not consider it necessary for the Council to adopt new legal instruments before the entry into force of the Constitutional Treaty. New Member States need to ratify the Europol Convention and the amending instruments at the same time. What is required is a period of consolidation, during which all decisions adopted by the Council in recent years regarding Europol should be ratified and implemented. At the same time, the awareness program launched recently to improve mutual understanding between Europol and Member States' law-enforcement services should be implemented⁷⁶.

It is essential that a simplified version of the Europol Information System becomes available as soon as possible. It is also essential that the recommendations from the HENU report of the summer of 2002 on how to improve the transmission of information by Member States be implemented. In this context it is important that the conclusions from the recently begun third round of evaluations be implemented once they are available.

A discussion about the feasibility of the *database of pending investigations* called for in the Vienna Action Plan should be conducted. This issue should be brought forward in the Council. Furthermore, concrete steps should be taken to *improve statistics on cross-border crime* and to allow Europol *access to the Customs Information System (CIS)*. The Commission considers it necessary that Europol has direct access to both the CIS and FIDE, since both legal instruments provide for it.

Once Europol has achieved its consolidation and assuming that a new Constitutional Treaty will provide for the replacement of the Convention with a European law, one issue to be addressed will be the possible attribution of *certain investigative powers* to it. An appropriate policy area to start with would be the fight against counterfeiting of the Euro, since this is a form of organized crime which attempts against the interests of the Union as a whole. Furthermore, Europol, together with the European Central Bank and the Commission, has been active in the field since the introduction of the Euro and therefore has considerable expertise. The discussion about such an important development would, of course, have to be accompanied by

⁷⁵ Joint Action creating a mechanism for evaluating the application and implementation at national level of undertakings in the fight against organized crime. 97/827/JHA, OJ L 344 of 15 December 1997.

⁷⁶ "Corporate Europol awareness strategy and program". AGIS project JAI/2003/188.

deliberations about judicial and parliamentary control over Europol. This is an important debate for the next few years.

2.2. Improving cross-border co-operation.

The Task Force of EU Police Chiefs is best placed to coordinate measures to improve actual cross-border co-operation on the ground. As has been pointed out in chapter 2.1.3 of the first part of this Communication, the Task Force has encountered problems stemming from the fact that it is not fully integrated in the institutional structures of the EU. To ensure its effectiveness, there is no alternative to incorporating the Task Force into the Council structures. Clearly the body would continue to focus on operational issues and would not be involved in the preparation of legislation, which would still be a matter for CATS.

The body would meet at least once per Presidency and be consulted on operational police co-operation subjects and other selected issues. This would be in line with the possible establishment of a Committee to promote operational co-operation on internal security in the Union, as proposed in the final draft Constitutional treaty prepared by the European Convention.

Optimal use should be made of existing permanent bodies such as Europol to assist the police chiefs in the examination of proposals and initiatives for operations and to implement, monitor and evaluate them. The Commission therefore proposes that Europol be tasked with submitting, on the basis of regular threat assessments, proposals for joint operations to the police chiefs meeting. Europol should also be responsible for their co-ordination, monitoring and evaluation, while closely associating Member States' police officers responsible for operations. Europol should also provide the operational support to the PCWG.

The Task Force of EU Police Chiefs should be involved in the organisation of EU police missions abroad, specifically in the planning, allocation of resources, and logistical aspects of them.

Especially in more recent years, several Member States have, often on the basis of the Schengen Convention, expanded cross-border co-operation considerably, with significant success on reducing crime. There appear to remain, however, a considerable number of Member States which are not yet so advanced. The Commission sees the establishment of Joint Police Stations or Police and Customs Co-operation Centers in all internal border regions of the Union, including the candidate countries, as an effective instrument to simultaneously reach a number of important objectives: reduction of crime; increase visibility *vis à vis* the public; build up mutual confidence and trust between the various services of the Member States concerned; and finally the building of effective co-operation between police, customs and judicial authorities where these three services cooperate in such centers.

The Commission therefore proposes that those Member States that have been successful in such cross-border cooperation report on their experience to the relevant working group of the Council. On the basis of these reports, a catalogue of best practices could be drawn up for use by interested Member States. If necessary, AGIS funding could be considered to prepare the catalogue, which in due course could also

serve as the basis for a legally binding instrument aiming at the institutionalisation of such co-operation in the EU.

With regard to the extension of cross-border pursuit (articles 40 and 41 Schengen Convention), the Commission is of the opinion that the European area of security requires that limitations to co-operation caused by the type of means of cross-border transport should be removed. It therefore recommends to continue the work of the expert group created under the Belgian Presidency in 2001, with the aim of making concrete recommendations to extend the possibility to pursue a criminal via air, rail (international trains) and water. Besides, police should have better possibilities to conduct cross-border pursuits, not only for more types of crime, but also have the means to effectively transfer the pursued wrongdoers to the competent local authorities, always in compliance with the relevant legal instruments regarding judicial cooperation in criminal matters. Police should be able to pursue when an individual ignores an order to stop and flees across the border.

As to the Schengen Police co-operation Handbook, it is important that it be updated regularly, which at present is not the case. To reduce the burden of translation as much as possible, templates with a minimum of variable information should be used. The Handbook should contain up-to-date contact information to facilitate cross-border contacts.

An evaluation of the extent to which article 44 of the Schengen Convention regarding direct communication links between the police and customs services of the Member States has been implemented should be undertaken as soon as possible. The links to be established should not be limited to phone and fax, but also encompass data and computer links.

At this moment, it is unclear how Member States implement article 45 of the Schengen Convention concerning registration forms for rented accommodation such as hotels and use the information in law-enforcement practice. Putting the discussion on the use of this information on the EU agenda is necessary, since it allows improvement of law enforcement on the basis of existing obligations and structures.

As to article 46 of the Schengen Convention regarding information exchanges on the initiative of a Member State, the Commission proposes that a survey of Member States' competent authorities be carried out, to determine the degree to which this article is being implemented and police action has been taken based on information exchanged according to it. The conclusions of such a survey could be used to standardize certain models of co-operation at internal borders.

Regarding SIS and the future SIS II, a rapid introduction of the new functionalities, if possible in the current SIS, should be promoted. Moreover, in September of 2003 the Commission submitted a proposal to give Member States' vehicle registration authorities access to SIS, in order to prevent stolen vehicles from being registered. Furthermore, the Commission was requested by the Greek Presidency to regularly update, together with the Member States, the Manual for SIS-SIRENE interacting.

Concerning article 32 TEU which calls for the Council to decide on the conditions under which the law enforcement services of one Member States can operate on the territory of another, the Vienna Action plan stresses its central importance for EU

police co-operation. The Convention on Mutual Legal Assistance in Criminal Matters (MLA) of 2000 and the Framework Decision on Joint Investigative Teams of 2002 seem to partly cover this subject. The Commission welcomes the discussions begun on this subject in the relevant Council working parties and encourages their continuation to examine this issue in depth. This is especially necessary with a view to the discussions on improving cross-border cooperation and also to clarify the conditions under which the police intervention units could operate on the territory of other Member States in case of crises.

Finally, joint surveillance operations carried out within the framework of the Customs Co-operation Working Group (CCWG) and the Police Co-operation Working Group (PCWG) should, where appropriate, include officers from all relevant law-enforcement agencies involved. Europol would seem an obvious body to provide the Operational Co-ordination Unit (OCU) when third-pillar matters are involved.

2.3. Creating a common culture, common instruments and methods.

In order to improve cross-border co-operation, it is important to promote measures that contribute to developing commonalities among the police and customs services of the Member States dealing with similar issues in the fight against crime. One of the major factors in overcoming the obstacles to more effective police co-operation in the EU is the creation of a culture of trust and co-operation among different law-enforcement agencies. Police training plays a key role in the creation of such a culture. As the only EU body dedicated to this task, CEPOL should have a central place in the future strategy of police co-operation in the EU.

In order for CEPOL to fulfil its tasks properly, it must be given the necessary resources and legal framework: it should have legal personality, a fully functional permanent secretariat and be financed through the Community budget.

Besides the actual organization of common courses in certain priority areas and aimed at key players in the police forces of the Member States -- such as courses for so-called "fast streamers" or the next generation of high-ranking police officers --, CEPOL should concentrate on the development of common curricula for police training, which would be applied in all Member States' police colleges, as well as on the development of common quality standards for both courses and trainers. CEPOL should have the mandate to proof, on a regular basis, whether these common curricula and standards are being applied by the police colleges of the Member States, and issue a CEPOL certification based on a peer-review system.

In the view of the Commission, CEPOL also has an important role to play in the training of senior officers working in the area of third-pillar customs cooperation. It therefore welcomes the fact that CEPOL already offers courses open to customs officials and thus provides joint training for police and customs in selected areas. In the long term, the Commission invites CEPOL and the Member States to reflect on the convenience of extending CEPOL's mandate to include also national customs training institutions, with a view to improving the EU's capacity to combat cross-border crime.

The Commission proposes to step up programs of exchanges and secondments in order to foster a culture of trust and co-operation. CEPOL, which will start work in these two areas in 2004, should play a central role in this regard. The importance of language training in the framework of such secondments and exchanges cannot be overestimated. The use of AGIS and other relevant Community programs in relation to both exchange programs and language training for police and other law-enforcement officers should be better explored.

Scientific research plays an essential role in improving the basis for decision-making in all areas. Only limited research is being done as regards police and customs cooperation. More funds should be made available, which is a joint responsibility for the Union and the Member States. The Commission will enable the AGIS program to allocate funds to studies on priority subjects identified in this Communication. It will also ensure a targeted use of the relevant parts of the 6th Framework Program. It is also important that a better view emerges of the priorities for research on police and customs cooperation. CEPOL has a potentially useful role to play here.

The subject of police ethics has been part of CEPOL's curriculum from the beginning of its activities. The Commission invites the Member States to reflect on the relevance of working towards an EU Code of Police Ethics. This would have positive effects on public opinion and contribute to improving confidence between Member States' police services.

Concerning the uniform evaluation of the investigation techniques referred to in Article 30 (1) (d) TEU, this has not yet started in the Union. The Commission proposes that Member States experts begin examining this question within the Council in the light of the proposed similar article in the draft Constitution text. To this end the Commission is ready to organise a meeting of experts and to possibly make funds available from the AGIS program. It is important that all Member States build up DNA data bases which are effective and efficient tools in solving crimes. A system should be developed to enable member States to check if DNA found on their territory matches that found in other Member States.

The subject of forensic science has not been dealt with structurally in the Union thus far. A first priority would seem to be raising the quality level of the forensic laboratories of the EU Member States by requiring them to introduce quality assurance systems based on a generally recognised standard. The Commission also invites the relevant Council working parties to re-examine the question of the European Network of Forensic Science Institutes' (ENFSI) role in EU co-operation in this area.

2.4. Counter-terrorism

The field of co-operation in counter-terrorism in the EU exemplifies better than any other the need to improve co-operation on both axes set out above: the flow of information between relevant services and actual cross-border co-operation on the ground. Counter-terrorism encompasses all aspects of law-enforcement co-operation, from joint investigation teams to special forensic techniques to allow the traceability of explosives.

As has been identified in the Commission's contributions to both the European Council meeting on 19 March 2004 and to the implementation of the European Security Strategy as regards the fight against terrorism, the first step towards improving action in this field is to improve co-ordination between all the services involved in the fight against terrorism within the Council structures. In a first stage all delegations to the Terrorism Working Group (TWG) should include representatives of both the police and the non-police intelligence services. The role of Europol in EU counter-terrorism policy should be strengthened by substituting the information system via the Europol Liaison Officers by a system of direct relations between Europol's counter-terrorism unit and the Member States, connecting Europol to the Bureaux de Liaison (BDL) network and incorporating Europol into the Club of Bern.

In a later stage, it would be necessary to bring the work of the Counter-terrorism Group (CTG) of the Club of Bern closer to the TWG. Europol should be transformed into a true center of counter-terrorism intelligence, including the creation of a common database on terrorism (persons, incidents, indications, operations, etc.). The Council Recommendation concerning the constitution of multinational teams to gather information about terrorists⁷⁷ (intelligence joint teams) should be changed into a legally binding instrument which allows intelligence services (police officers or not) and Europol to work together.

There are also good arguments to improve the coordination of counter-terrorism activities inside EU institutions and to reinforce the role of the Terrorism Working Group in preparing EU policy making. The working methods of the TWG should be improved by allowing Europol a more proactive role. The activities of the TWG should include all aspects of the fight against terrorism, in particular its financing and co-operation with third countries in the application of resolution 1371 of the Security Council of the United Nations and have a role in preparing EU counter-terrorism policy.

In the aftermath of the terrorist attacks in Madrid on 11 March 2004, a number of measures were agreed by the Council with the aim of improving counter-terrorism co-operation in the EU. Some of these regard aspects of actual operational co-operation between law-enforcement services, such as improving controls and traceability of firearms and explosives, the possibilities of establishing an EU database on forensic material, facilitating cross-border hot pursuit, and simplifying the exchange of information and intelligence between law-enforcement services of the Member States. Other actions concern the ratification and/or implementation of relevant legal instruments, such as the Convention on Mutual Legal Assistance and its Protocol, and the three Protocols to the Europol Convention.

The two documents prepared by the Commission in the aftermath of 11 March 2004⁷⁸ and mentioned already in section 2.1.6.1 above identify a series of measures to improve the EU's operational capabilities to more effectively prevent and fight terrorism. Among these measures, it is important to underline here better use of existing instruments, such as Europol and Eurojust, or the Framework Decision on

⁷⁷ Recommendation of JHA Council of 13 June 2002.

⁷⁸ SEC (2004) 348 of 18 March 2004 and SEC (2004) 332 of 19 March 2004.

Joint Investigation Teams, as well as a strengthened role for the Task Force of Eu Police Chiefs.

2.5. Customs co-operation

There exists a well established co-operation between customs in the third pillar. However, there is scope to further develop and improve this co-operation to make it more effective along the following lines.

As regards joint customs surveillance operations in this area, all recommendations should be recorded and taken into account during the planning process for future similar operations, to avoid problems of repetition, which currently arise. A single response form should be developed, using a single language for replies, during joint customs operations. Such a form would ensure that information is received in one recognised language and thus overcome the difficulties encountered at present. Europol should provide support in such operations, notably through the analysis of data.

There is also a need to establish a permanent Operational Co-ordination Unit (OCU) to provide logistical and technical support for joint customs operations. Such a unit is essential for an effective implementation of future joint customs operations in both the third and first pillars. The Commission services should examine the most efficient way of providing this support.

Customs administrations in the EU should more actively share liaison officers. This system would provide for greater efficiency and savings in terms of financial resources.

To complete the study being undertaken for general customs control equipment at the external borders⁷⁹, it may be also useful to make a study of the equipment available and necessary in Member States for the control of the external border, which is specifically required for third pillar purposes. This study should recommend number and type of equipment needed, as well as the possible sharing or hire of such equipment to assist Member States who do not have sufficient resources.

Common risk indicators and profiles will be key to improved controls in the fight against trade in illicit goods and, as part of a coherent and cost effective approach, it should be examined how best to develop this in the third pillar. Specific account should be taken of the cost benefits of building on the ongoing first pillar work on risk management.

Additionally, common EU threat assessments regarding prohibited and restricted goods should be developed. This is necessary to set clear priorities for joint operations, to make them more effective in the fight against the trade in illicit goods.

The Commission is concerned about the fact that five Member States have still not ratified the Naples II Convention of 1997, and about reports that this could be due to competence problems between police and customs services in some Member States.

⁷⁹ "Communication from the Commission to the European Parliament and the Council on the role of customs in the integrated management of external borders." COM(2003) 452 final of 24 July 2003.

Naples II is an essential instrument in the fight against serious international crime and should be ratified immediately. At the same time, the Union should adopt a system for the evaluation of all conventions and instruments in the field of customs cooperation in the third pillar, in order to ensure consistent implementation and effective control of the external border by the Member States.

Customs administrations should evaluate the development of a common approach to training for customs in third-pillar matters to ensure an equivalent level of expertise. Such an approach could include making places available in national courses for officers from other customs administrations in the EU, as part of their induction training. The participation of foreign customs officials in training courses would also promote awareness and help develop contacts. It should be noted that good experience has been gained with customs training under Community programmes (Matthaeus and Customs 2002).

Joint training for customs and police with similar responsibilities and functions should be provided. In this respect, the mandate of CEPOL could be extended to include customs training institutions of the Member States.

As to improvements in co-operation between police and customs, the Commission proposes that Member States first implement the Council Resolution of 1996 on the formalisation of co-operation between police and customs as regards the fight against drugs trafficking. In a second phase, such co-operation agreements should be extended to all other relevant crime areas. Enhancing cross-border co-operation has already been mentioned above, as has training. The participation of customs in the meetings of the Heads of Europol National Units should be extended, and the deployment of customs liaison officers to Europol by all Member States should be promoted. The creation of a specific customs unit within Europol should be considered.

Finally, the Commission proposes to use the experience of Member States that have established effective co-operation arrangements between police and customs as models. It proposes that such arrangements be discussed in the relevant working groups of the Council, to see to what extent these could be used by other Member States. In this regard, better coordination between the Police Co-operation Working Group, the Multidisciplinary Group on Organized Crime and the Customs Co-operation Working Group of the Council would be welcome.

3. FINAL REMARKS

The Commission calls on the European Parliament and the Council to examine the measures proposed in this Communication to improve the effectiveness of EU police and customs co-operation and thereby contribute to the full implementation of Article 29 TEU.

After having discussed this Communication with the European Parliament and the Council, the Commission intends to come up with concrete proposals on how to address the specific problems identified.