Delegations please find in Annex the comments by delegations to the "First reflections concerning the Tampere Conclusions as far as they relate to Europol" as contained in doc. 13370/99 EUROPOL 48.

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ANNEX I

RESPONSE BY THE NETHERLANDS DELEGATION

1. Introduction
In general, it can be said that, compared to the Treaty of Amsterdam, the European Council of Tampere generated little news concerning the future developments of Europol. A fact which is hardly surprising seeing that this Treaty only recently entered into force on 1 May 1999. An important exception in this regard concerns conclusion 56 of the European Council of Tampere in which it was agreed to expand Europol's mandate to tackle money laundering as such: in other words, without requiring any connection to those types of crimes belonging to Europol's mandate (article 2(3), sub 1 of the Europol Convention).

Article 30(2) of the Treaty on European Union (further referred to as TEU) stipulates a term of five years in which to realise the measures aimed at promoting police co-operation via Europol. However, the Netherlands delegation draws attention to the fact that, on 11 and 12 December 1998, the European Council of Vienna approved the Action Plan drafted by the JHA Council and the Commission for an area of freedom, security and justice (DOC. 13844/98 JAI 41) and that, pursuant to point 43 of that Action Plan, the term referred to in article 30(2) of the TEU was reduced to two years after the coming into force of the Treaty of Amsterdam. This means that the required measures must be realised by 1 May 2001, at the latest.

In this light, the Netherlands delegation regrets that the Europol Working Group, charged with elaborating the provisions of the Treaty of Amsterdam concerning Europol, only met once during the last six months and that only four meeting days have been planned for the coming semester. We fear that such a meeting schedule will prove insufficient for the progress of the activities and that we will find ourselves in the paradoxical situation that, rather than injecting added impetus, “Tampere” will delay matters. Due to this, the Portuguese presidency is asked to set aside more meeting days for activities involved in implementing the Treaty of Amsterdam and the conclusions of the European Council of Tampere.
2. Dutch principles

In assessing article 30(2) of the TEU and the conclusions of the European Council of Tampere, the Netherlands delegation deploys the following three principles:

a) Given its wording, article 30(2) of the TEU is directed at the Council and, as far as Europol is concerned, has no immediate effect: in other words, before Europol can assume the tasks stated here, the Council will need to have taken the required action.

Contrary to what is sometimes supposed, Europol is unable to base its activities in the sense referred to in the provisions concerned on either article 30(2), TEU or on any other provision. On this point there is absolutely no room for misunderstanding given the text ("The Council develops…" etc). The Council must first take the appropriate measures. The opinion of the Netherlands delegation on the measures to be taken will be detailed below.

b) In light of the fact that the tasks of Europol are laid down in a convention, notably in article 3 of the Europol Convention, expanding or amending the tasks can only be realised by means of a similar legal instrument; in this case the Europol Convention is to be amended or supplemented.

In as much as article 30(2) of the TEU and the conclusions of the European Council of Tampere contain amendments or expansion of Europol's range of tasks, this must be realised by amending or supplementing the Europol Convention. The tasks of Europol are laid down in a convention and can only be amended or supplemented by means of a similar legal instrument. Tasks can not be expanded via any other legal instrument. To realise this aim, the Netherlands has in mind a protocol for the Europol Convention, of limited size and substance. Designing such a protocol - which will be discussed further below - should commence as soon as possible.

Where article 30(2) of the TEU and the conclusions of the European Council of Tampere contain themes that could be accommodated in Europol's current package of tasks, this needs to be stated clearly and with reasoned motivation as to which of the tasks mentioned in Article 3 of the European Convention is involved.
c) The Netherlands delegation opposes granting executive powers to Europol and its staff. Europol is a facilitative and support organisation and the executive police powers should remain the preserve of the national services.  

The Netherlands delegation finds that Europol and its staff should not be granted executive powers. Nor is this prompted by article 30(2) of the TEU and the Conclusions of Tampere. The Netherlands delegation wishes to state here clearly that in the discussion of new tasks for Europol it is essential that this expansion for Europol is not sought in the sphere of executive powers.

As regards the substantial aspects of expanding Europol's tasks, the Netherlands delegation also refers to its commentary of 21 April 1999 on document 6245/99 Europol 7. The Netherlands delegation regrets that the discussion on its substance, initiated under the chairmanship of Germany, ground to a halt. This discussion must be recommenced at the earliest opportunity, then dynamically put into implementation.

3. Conclusion 43 - Strengthening co-operation in the fight against crime

“Maximum benefit should be derived from co-operation between Member States’ authorities when investigating cross-border crime in any Member State. The European Council calls for joint investigative teams as foreseen in the Treaty to be set up without delay, as a first step, to combat trafficking in drugs and human beings as well as terrorism. The rules to be set up in this respect should allow representatives of Europol to participate, as appropriate, in such teams in a support capacity”.

The Netherlands delegation notes that the draft Convention on mutual assistance in criminal matters contains a number of provisions on joint investigation teams, notably in article 13. This article includes a number of lines on the setting up of joint investigation teams, their composition, management, the exchange of information and so on, plus wording on the possibility of allowing officials other than representatives of Member States to take part (section 11). This section was included specifically with reference to Europol that, according to a provision under article 30(2) under a of the TEU, should be able to take part in joint investigation teams.
With the exception of a parliamentary proviso of the United Kingdom and Sweden, on 2 December 1999, the JHA Council agreed with the regulation of joint investigation teams set down in article 13. We expect that, once the recommendations of the European parliament have been received, the decision on the draft Convention on mutual assistance in criminal matters will be rounded off in March 2000.

The Netherlands delegation considers it highly desirable that - also in the context of Europol - the use of the term "joint investigation teams" is reserved for the teams as referred to in article 13 of the draft Convention on mutual assistance in criminal matters. In other words, when it involves teams set up by the competent authorities of two or more Member States for a specific objective and a limited period to conduct an investigation in one or more of the Member States concerned (article 13(1)). Referring to other forms of co-operation while using the term "joint investigation team" will only lead to confusion. For example, a group of police officers from various member States which co-ordinates a cross-border activity in the Europol building should not, in the eyes of the Netherlands delegation, be referred to as a " joint investigation team".

The question that arises in the context of this commentary is as follows: if this is desired, how should the participation of Europol in a joint investigation team be shaped? Before answering this question, the Netherlands delegation would like to make a number of remarks in response to conclusion 43 of the European Council of Tampere. Although this conclusion seems clear, in fact it is not. The Netherlands delegation understands it as follows. The European Council instructed the JHA Council and the Member States to take all legal preparations, without delay, aimed at enabling a joint investigation team to be set up in suitable cases. In other words, the European Council calls for the Convention on mutual assistance in criminal matters to be signed immediately, to be ratified at the earliest opportunity and, if necessary, to be implemented in national legislation.

The Netherlands delegation feels that conclusion 43 does not entail the actual appointment of investigation teams without delay. This can hardly be the meaning of conclusion 43 because setting up joint investigation teams is only constructive in response to a concrete situation where such activities are clearly required and, pre-eminently, because the required legal grounds for such teams will have to be laid first. The Dutch interpretation of conclusion 43 is also supported by the last sentence which speaks of "the rules to be set up".
In the lights of the above, the Netherlands delegation remarks that it is not in agreement with the considerations on conclusion 43 of the Finnish presidency. The premise proposed in document Europol 48 as to how a joint investigation team could function within the current legal framework is inaccurate if the intention is at least to allow a team to function so that implementing investigative activities in the Member States concerned is placed on entirely the same footing as investigative activities for national investigations and that a request for legal aid is no longer required (see article 13(6) of the draft Convention on mutual assistance in criminal matters). The Netherlands delegation makes no further comment as far as joint investigation teams are concerned in a general sense as this is not a subject for the Europol Working Group but for the Working Party on Co-operation in Criminal Matters.

In addition to the content side of the issue, the question that should engage the Europol Working group is whether a legal instrument is required to give Europol the option of taking part in joint investigation teams and if so, which would be the appropriate legal instrument?

In answering this question, in contrast to what seems to be suggested by the Finnish presidency, the deciding factor is not the need of a speedy realisation, but the current legal regulations. It is the view of the Netherlands delegation that amending or supplementing Europol’s task is only possible by amending or supplementing the Europol Convention, as stated before under point 2 sub 2, that amending or supplementing Europol's tasks is only possible by amending or supplementing the Europol Convention. Whether or not speed is exercised does nothing to alter this fact. But in concrete terms, this involves an answer to the question whether Europol's participation in joint investigation teams (as referred to in article 13 of the draft Convention on mutual assistance in criminal matters) can be numbered among the tasks laid down in article 3 of the Europol Convention, rather than an expansion of Europol's tasks.
The Netherlands finds that the participation of Europol in joint investigation teams in the Member States essentially contains such new elements that this participation cannot be seen as one of the tasks stated in article 3 of the Europol Convention. This is also the case when, in accordance with Dutch views, Europol's contribution is supportive and its staff are not granted executive powers. Those who drafted the Europol Convention had not envisaged such a role for Europol while those responsible for drawing up the Treaty of Amsterdam were concerned with expanding Europol's tasks. Those who experienced or followed the negotiations on the draft Treaty that resulted in the Treaty of Amsterdam are aware that this subject has been thoroughly debated. This would not have been necessary if participation in the joint investigative teams would have been included in the current package of tasks.

For the sake of clarity, the Netherlands delegation observes that the content of article 30(2), TEU was extensively debated during the parliamentary discussion of the bill to adopt the Europol Convention. On that occasion, Government and Parliament have more than once expressly taken the view that this article does concern expanding Europol's tasks and that this expansion can only be realised by amending or supplementing the Europol Convention.

Under point 2 of this paper, the Netherlands delegation has stated it's consideration of a protocol of limited size and substance. The Netherlands delegation proposes making an immediate start on putting together a draft protocol which will set down the expansion of Europol's tasks as given in article 30(2) of the TEU and the conclusions of the European Council of Tampere.

The Netherlands standpoint favours laying down, with reference to article 13 of the draft Convention on mutual assistance in criminal matters, the conditions under which officials of Europol will be able to take part in joint investigation teams and which activities they will - or will not - be able to perform. According to the Netherlands opinion, this must stipulate, among other things, that a Europol staff member taking part in a joint investigation team will carry out his activities subordinate to the authority that, in conformity with article 13(3) of the draft Convention on mutual assistance in criminal matters, is charged with managing the team. Article 30(1), of the Europol Convention prohibits the staff of Europol from asking for or accepting instructions from
any government or any authority, organisation or person outside Europol save as otherwise provided in the Convention. The protocol to be drawn up will need to contain an express measure which determines that this rule is not applicable when a staff member is part of a joint investigation team.

Perhaps unnecessarily, in this regard it is observed that, pursuant to article 17(1), first sentence of the Protocol on privileges and immunities, immunity from legal process, stated in article 8(1) under a of that Protocol is not valid for exercising new tasks. The Netherlands considers such immunity entirely undesirable in the context of participation in joint investigation teams.

4. Conclusion 44 - Operational Task Force of European Heads of Police

“The European Council calls for the establishment of a European Police Heads 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.”

In implementing this conclusion, the Netherlands delegation assigns a key role to two aspects. Firstly, it must be borne in mind that this concerns an operational task force that must, among other things, be designated the task of contributing to the planning of operational activities. Secondly, the heads of the Europol national units play an essential role within Europol's working relationship. The national desires and needs and the activities to be carried out by Europol are co-ordinated through these heads of units in particular. According to the Netherlands delegation, these two aspects imply that the shaping of a task force of police chiefs should take place within the Europol structure and that the heads of the National Units should function as a framework for this task force of police chiefs. Nothing is stopping the appointment of such a task force by a "simple" Council decision because no official powers are (nor should be) granted to the task force of national police heads. By way of further elucidation, we observe that the Europol Convention (article 4(7) did not devote a convention provision to the advisory role of the heads of the national units as this was considered necessary at the time, but because by so doing more emphasis was placed the heads' periodical meetings.
The arguments in favour of setting up the task force within the Europol structure argue against such a unit being set up as an advisory body within the Council context. Given the mainly operational nature of this task force, the Netherlands objects to it being structured as a Council advisory body as, from the perspective of the co-ordination desired, it would be solely counterproductive given that the co-operation at operational level must and shall be increasing shaped via Europol.

5. Conclusion 45 - strengthening the role of Europol

"Europol has a key role in supporting union-wide crime prevention, analyses and investigation. The European Council calls on the Council to provide Europol with the necessary support and resources. In the near future its role should be strengthened by means of receiving operational data from Member States and authorising it to ask Member States to initiate, conduct or co-ordinate investigations or to create joint investigative teams in certain areas of crime, while respecting systems of judicial control in Member States."

This conclusion deals with various aspects, all intended to strengthen the role of Europol.

5.1. Support and resources

In order to offer Europol the opportunities to function properly, the JHA Council will need to support this organisation and provide the resources required. As regards the latter, general agreements were made during the JHA Council held in May 1998 in the sense that Europol's entire personnel will need to expand considerably over the first few years. A starting point which receives Netherlands support. In this context, we must of course acknowledge that the activities to be undertaken by Europol justify substantial expansion of staff numbers. This section of conclusion 45 of the European Council of Tampere must be further worked out by the Europol Management Board and the JHA Council within the structure of the annual budget cycle.
5.2. Providing Europol with operational data

The Netherlands delegation reads this section of the conclusion as follows: the Member States are summoned loyally to meet their undertaking laid down in the Europol Convention to provide data, including operational data, for the Europol information system and the analysis data bases. On the provision of information for the analysis data bases (the information system is not yet up and running), during the last meeting of the Management Board on 16 November 1999, the director of Europol observed that the provision was sorely lacking. It is to be hoped that this shortcoming will be eradicated as time goes on; in any event, this is a task for the Europol Management Board and possibly the JHA Council, not for the Europol Working Group.

This is not the case with regard to the possible access of Europol to the SIS and DIS. The Netherlands delegation does not object to Europol gaining access to the SIS and is prepared to work towards investigating whether and under which conditions access to the DIS could be facilitated.

5.3. Request from Europol to the Member States to instigate an investigation and other new tasks

The last section of conclusion 45 of the European Council of Tampere refers essentially to expanding the tasks of Europol as expressed in article 30(2) TEU.

In its policy document, the Finnish presidency makes a number of observations on the possibility for Europol to request the Member States to instigate, conduct or co-ordinate an investigation, and on the possible consequences of such a request. There is no doubt that, also within the current framework of the Europol Convention, Europol - via the national units - can request the Member States to instigate an investigation. In the current situation such a request is entirely non-obligatory and nothing compels the Member States to respond to such a request or take action in that regard.
Referring to the aforementioned Netherlands delegation's commentary of 21 April 1999 on Europol 7, we again observe that only the competent authorities in the Member States may conduct or order investigations. On the basis of concrete analysis results, Europol can acquire the competence to advise the Member States (unrequested) and instigate an investigation but such advice is not - legally - binding. Nonetheless, this formal legal standpoint does not alter the fact that when a co-operation via Europol does not have a follow-up in national investigation and prosecution, it's point is substantially reduced. Within this context, politically, the Netherlands attaches great value to a request or advice from Europol to start a particular investigation. The Netherlands delegation thus also speaks out for giving this competence of advice the necessary weight and to set it down in the protocol for expanding Europol's tasks. For the remainder, the Netherlands delegation wishes to refer to its response of 21 April 1999 to Europol 7.

6. Conclusion 46 - Eurojust and the possible relations with Europol

“To reinforce the fight against serious organised crime, the European Council has agreed that a unit (EUROJUST) should be set up composed of national prosecutors, magistrates, or police officers of equivalent competence, detached from each Member State according to its legal system. EUROJUST should have the task of facilitating the proper co-ordination of national prosecuting authorities and of supporting criminal investigations in organised crime cases, notably based on Europol’s analysis, as well as of co-operating closely with the European Judicial Network, in particular in order to simplify the execution of letters rogatory. The European Council requests the Council to adopt the necessary legal instrument by the end of 2001.”

The Netherlands delegation shares the vision of the Finnish presidency that the key question for the Europol Working Group is the relation between Eurojust and Europol. At present, no substantial comments can be made on this point.
7. Conclusion 56 - Europol and money laundering

“The European Council invites the Council to extend the competence of Europol to money laundering in general, regardless of the type of offence from which the laundered proceeds originate.”

During the European Council of Tampere, the Netherlands argued for expanding Europol's mandate with the prevention and fight against money laundering as such and no longer restricting it, as is currently the case, to money laundering activities connected to those forms of crime belonging to Europol's mandate. The vision of the presidency that amendments and supplements to the Europol Convention are required here, is shared. This could be shaped in the protocol for expanding Europol's tasks, proposed by the Netherlands.

8. Summary

The Netherlands delegation concludes that, compared with the Treaty of Amsterdam, the European Council of Tampere has generated little news as far as Europol is concerned. Expanding the mandate of Europol with the prevention and fight against money laundering as such is the only significant exception. This expansion should gain shape at the earliest opportunity by means of a protocol in which expanding the tasks of Europol (participation in joint teams, requesting Member States to instigate investigations and so) must be laid down. Expanding Europol's package of tasks without a basis in conventional provisions is unacceptable to the Netherlands. Given the description of tasks, the operational task force of police heads should be set up within the structure of Europol. The Netherlands objects to it being structured in the form of an advisory body within the structure of the Council.
The Commission first of all wishes to congratulate the Presidency to this very thoughtful analysis of the Tampere Conclusions and to underline that it fully agrees with most of its contents. Nevertheless, we feel that a few passages require some additional considerations of which we inform you in the following:

1. **Recommendation 45**

As far as recommendation No. 45 of the Tampere Conclusions to provide Europol with the necessary support and resources is concerned, the provisions of Article 41 paragraph 2 TEU cannot be left aside but should be positively highlighted because of their very practical implications for the resources to be made available to Europol.

This provision foresees that the administrative expenditure which the provisions relating to the areas referred to in Title VI entail for the institutions shall be in principle charged to the budget of the European Communities.

Paragraph 3 foresees that also the operational expenditure to which the implementation of those provisions gives rise shall be charged to the budget of the European Communities, except where the Council acting unanimously decides otherwise. In cases, in which the expenditure is not charged to the budget of the European Communities, it shall be charged to the Member States in accordance with the gross national product scale, unless the Council acting unanimously decides otherwise.

Even if it is questionable whether Europol can be considered as a "organ" in the sense of the Treaties of the European Community, the question occurs to what extent at least the "operational" expenditure of Europol should be charged to the budget of the European Communities. In this context, likewise, the question occurs to what extent one could distinguish between "administrative" and "operational" expenditures and to what extent such a distinction would be practicable at all.
I thus propose to add some text to that effect, best after point a) on page 3. The Commission would be glad to suggest some language, if you wish so.

2. **Recommendation 46**

Regarding recommendation 46, setting up EUROJUST, composed of national prosecutors, magistrates or police officers of equivalent competence, to facilitate the proper co-ordination of national prosecuting authorities, supporting criminal investigations in organised crime cases, notably based on Europol's analysis, as well as co-operating closely with the EJN, I want to draw your attention to two major aspects:

This is, firstly, the recommendation of the Committee for Civil Liberties and Internal Affairs of the European Parliament on the strengthening of the parliamentary control and the extension of the powers of Europol, which was issued on 23 February 1999.

It should be noted that the European Parliament in the so-called "Nassauer-report" is requesting for more democratic controls on Europol if this police body will get the responsibility to initiate cross-border investigations. Furthermore, the Parliament has asked that Europol should be subordinated under the responsibility of a member of the European Commission who would himself be placed under the supervision of the Parliament. The report also insisted for the creation of a European public prosecutor's office instructing Europol.

In his hearing in front of the Committee on Civil Liberties and Internal Affairs Mr. Vitorino had agreed that the Parliament should have a specific role to play in the monitoring of Europol.

And this is, secondly, the general question, whether the establishment of an European public prosecutor's office and a penal competence of the ECJ would be long-term objectives of these efforts. It is the Commission's view that with this particular question should be dealt with in general only after having got an agreement on enlarging the competencies of Europol to further operational and executive powers that are going beyond the possibilities for which the Europol Convention and also the Amsterdam Treaty is providing for for the time being.
But you would agree that financial crime, and money laundering in particular, needs urgent attention. Our financial institutions, our law enforcement agencies and our regulators have to combine their efforts at national and Union level. Protecting the Euro against fraud adds a new and important dimension. And the protection of the Community's financial interests offers an interesting and appropriate first area for introducing the idea of a European Public Prosecutor. This would neither change the substance of the law nor the procedural law in each Member State; it would simply ensure that action is taken rapidly and in a consistent way where relevant in the Union. Previous initiatives have shown the advantage of concentrating on a politically urgent sector to foster progress that may, afterwards, inspire or serve as a model on a broader scale.

The recommendation to create a European public prosecutor was made in 1997 in the corpus juris study established by independent experts. In the area of protection of specific Community interests the urgency, the necessity and the legitimacy of a public prosecutor is quite evident because of the nature and the importance of the protected interests, and the particular responsibilities, which rest upon the Union and its institutions. The setting up of a European public prosecutor must in particular be accomplished before the accession of new Member States. This approach is without prejudice to the general aim of improving the efficiency of transnational prosecution throughout the European Union in areas that are of major concern for the union and its Member States. Such target would have to be addressed with the parallel development of EUROJUST, whose scope of activities would correspond to the activities of Europol.

3. **Recommendation 44**

Regarding recommendation No. 44 of the Tampere Conclusions to establishing 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, it is the Commission's view that the Council Working Group on Police Co-operation would be an appropriate floor for such a group. The scope and the implementation of this recommendation are not limited to issues falling into the restricted area of the Europol mandate. One could imagine that this group could also deal with operational security issues (organisation / co-ordination of
international mass events - football games, fares, manifestations, etc.) and operational and technical aspects of prevention and urban delinquency, as with operational issues falling under the remit of police-co-operation within the Schengen framework. As far as Europol matters will be concerned, a co-ordination with Europol would be guaranteed by the Article 36 Committee, or, within the Member States via the Europol Heads of National Units or the delegates in the Europol Working Group and the members of the Europol Management Board.

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ANNEX III

RESPONSE BY THE IRISH DELEGATION

**Recommendations 43 – Joint Investigation Teams**

While Ireland has no difficulty with the concept of Joint Investigation teams, this is on the basis that the primacy of the Irish police (the Garda Síochána) will not be affected as regards any investigative or police acts which take place within our jurisdiction. As regards the specific recommendation, in Ireland's view there are two issues to be addressed:

(i) We would respectfully suggest that the Article 36 Committee should assign responsibility to a specific working group or groups to progress the Tampere conclusion that joint teams should be set up "as a first step, to combat trafficking in drugs and human beings as well as terrorism". That group or groups must co-ordinate with the other relevant groups and in particular take account of the work done by the Mutual Assistance Group;

(ii) The participation of Europol needs to be addressed by the Europol Working Group. As a first step, the availability of analysis support by Europol staff based in the Hague to joint teams should be confirmed.
As a second step, the possibility of allowing Europol staff to be assigned, at the request of the host or lead country, to support joint teams should be considered. Such Europol support staff would not have any operational powers and would be subject to the direction of the host country. Their role would fall within the remit of the existing Europol Convention.

Consideration could be given to formalising such arrangements by means of a Council decision under Article 34(2)(c) (or possibly (b) of the Treaty).
**Recommendation 44 - Police Chiefs Task Force**

This issue should be addressed in the first instance by the Article 36 Committee. When the basic framework for such a Task Force is clear, the Europol Working Group should consider how it could interact with Europol.

**Recommendation 45 - (a) Resources; (b) operational data; (c) initiate investigations**

(a) The provision of resources is an ongoing matter. The Europol Working Group does not need to involve itself at this point;

(b) In the context of (c) below, it may be appropriate for the Council to make a declaratory statement on the receipt of operational data by Europol. We would agree with the view that no legal change is required to allow Europol receive operational data;

(c) The Council is under an obligation to adopt measures to ask the competent authorities of members to conduct and co-ordinate their investigations in specific cases. Ireland is of the view that measures should be taken without amending the Europol Convention;

A Council decision might be considered addressing issues such as
(i) operational data;
(ii) the circumstances where Europol might make requests and to whom;
and
(iii) the need for such requests to be given due consideration and response.
Recommendation 46 - Eurojust

Ireland is not in a position to comment until the role and structure of Eurojust is clarified.
Recommendation 51 - Tracing and seizure of assets

Europol's role should be determined by the provisions of the Europol Convention. We do not see any need to consider Europol's role in the context of Recommendation 51.

Recommendation 56 - Money Laundering

Ireland supports the extension of Europol's competence to money laundering in general and favours amending the Europol Convention accordingly.

ANNEX IV

RESPONSE BY THE SWEDISH DELEGATION

Further to the meeting of the Europol working group on 6th December 1999. Please find enclosed the Swedish comments on document EUROPOL 48. It must however be emphasised that the comments are based on a preliminary analysis.

Recital 43 of the Tampere Conclusions concerning joint investigative teams

The JAI-Council confirmed consensus on the provisions concerning the possibility to set up joint investigation teams in the draft Convention on mutual legal assistance in criminal matters between the Member States of the European Union, on its meeting on the 2nd December 1999. These provisions should constitute the basis of the work in the Europol working group. The definitions used in the scenario for Joint Teams in document EUROPOL 48 and in the future work in the Europol working group should consequently be brought into line with the provisions of the draft Convention.
The functions set out for Europol in article 30.2 the Treaty on European Union (TEU) fall within the framework of tasks according to the Europol Convention. This indicates that the application of the article would not require any amendment to the Convention.

The purpose of the article is not to approximate the laws and regulations of the Member States, but rather to strengthen the role of Europol and make its tasks clearer. This points towards a Council decision according to article 34.2.c TEU rather than a framework decision according to article 34.2.b TEU. Such a decision should enable Europol to work in compliance with article 30.2 TEU.
Recital 44 concerning a European Police Chiefs operational Task Force

The Task Force shall, according to the Tampere Conclusions, engage itself in current trends in crime. Its fields of action must not be limited by the Europol mandate. The Task Force should therefore not operate in the framework of Europol. The Swedish position is furthermore that the Task Force should not form a part of the institutional framework of the Council, but could be arranged as a seminar held on regular basis.

It should also be analysed if the functions and composition of the Task Force and the Heads of national units (HENU) group are inconsistent or compatible with each other. Due to the result of the analysis it should be determined whether the members of the HENU group could form a Task Force to meet the demands of the European Council.

Recital 45 concerning receiving operational data and Europol’s possibility to ask Member States to start investigations

In this conclusion it is established and emphasized that it is vital that Europol really is provided with operational data from the Member States. It is crucial that the cooperation between Europol and the Member States is founded on mutual confidence. When this is the case there will in practice not be a need for Europol to rely on imperative provisions when asking Member States to start investigations. There is consequently no need for special provisions in the Europol Convention.

Recital 46 concerning Eurojust

Eurojust will be discussed in different fora under the Council in the near future, among others at the informal meeting of Justice and Home Affairs ministers in March. The outcome of those discussions will indicate a more detailed model for Eurojust. The Swedish attitude concerning the shaping of the Eurojust unit is that an amendment to the Europol Convention hopefully can be avoided.
Recitals 51 and 56 concerning money laundering

Sweden supports the idea to extend the Europol mandate to money laundering in general. This extension of the competence will most likely entail analysis of operational data in relation to e.g. tracing, freezing, seizure and confiscation of proceeds of crime.

ANNEX V

POSITION OF THE AUSTRIAN DELEGATION

The Austrian delegation has the following observations to make with regard to 13370/99 - Europol 48 from the Presidency of the Europol Working Party concerning certain Tampere conclusions:

Re: 2.i) Rec. 43 of the conclusions on joint investigative teams

In this connection, use should be made of the extensive work undertaken under the German Presidency of the Council in the first half of 1999. Austria maintains the views it expressed in reply to the questionnaire from the German Presidency (6245/99 – Europol 7), in particular on Section B.I.(1), outlined in its fax of 22 April 1999 to the Council General Secretariat. A copy of this position is annexed hereto for the record.

The discussions that took place in the Europol Working Party on 6 December 1999 demonstrated that the delegations clearly have different opinions about the nature, tasks and powers of any such joint investigative team. Any plans to give the joint investigative teams more powers than those foreseen in the Austrian position of 22 April 1999 and the related matter of Europol’s participation in such teams would be possible only following the creation of an appropriate legal basis, i.e. by supplementing the Europol Convention.

However, no decision can be taken on the correct legal form for measures to be implemented until the content of such measures is clear.
Re: 2.ii) Rec. 44 of the conclusions on a European Police Chiefs Task Force

The very ambivalent wording of this conclusion would undoubtedly lead to coordination problems and uncertainty about powers if the Task Force were set up within the framework of the Council. Moreover, the Council’s structures do not seem to be suitable for discussing “operational” matters.

Likewise, holding meetings in the framework of, or alongside, Europol would merely result in parallel activities which would add little value to the existing bodies and fora.

Accordingly, Austria believes it would be useful to hold the Task Force meetings in an informal framework, as planned by the incoming Portuguese Presidency of the Council.

Re: 2.iv) Rec. 46 of the conclusions on the relationship with Eurojust

The conditions for establishing formal relations between Eurojust and Europol cannot be assessed conclusively until such time as the legal status of Eurojust is determined. This should not, however, require an amendment of the Europol Convention since Article 10(4) and Article 42(1) thereof already contain legal bases for cooperation relations with EU bodies and the Management Board of Europol has also already adopted the rules for such cooperation relations pursuant to Article 42(1).

Re: 2.v), vi) Recs. 51 and 56 of the conclusions on money laundering

Extending the competence of Europol to combating money laundering, regardless of the predicate offence, requires amendment of the Europol Convention.
ANNEX TO THE AUSTRIAN CONTRIBUTION

Further to the discussions within the Europol Working Party meeting on 5 March 1999, below are the Austrian delegation’s comments on the questions raised in 6245/99 EUROPOL 7.

General

As was evident from the first exchange of views at the Working Party meeting held on 5 March 1999, several delegations consider the relevant provisions of the Amsterdam Treaty as rather generally worded, not particularly clear and in need of discussion. Such technical considerations, which obviously could not be dealt with in the framework of the Intergovernmental Conference, have to be addressed now before taking further decisions on the legal development of this matter.

However, it should be borne in mind that the top priority is to enable Europol to take up its activities. Tackling new problem areas should not interfere with this objective. Further development of concepts for police cooperation within the European Union is not an end in itself, but should be based on the practical demands encountered in the joint fight against crime. It would therefore be wise to consider the activities and results of the operation of the European Police Office, EUROPOL, before taking any further decisions on the possible extension of powers.

This requires a coherent approach within the Council’s working structures; consequently, the views of the Presidency of the Working Party on Mutual Assistance in Criminal Matters put forward in 6667/99 JUSTPEN 13 EUROPOL 16 CRIMORG 34 seem premature to say the least.
The powers conferred in the Europol Convention were obviously not taken into account when drafting Articles 29 et seq of the Amsterdam Treaty; a whole series of objectives set in the Amsterdam Treaty can therefore be implemented using the existing legal basis.

**Re: Point B.I.(1) “Operational actions of joint teams”**

It would not seem desirable to set up joint teams with “real” investigative powers, whereby all team members could actively exercise sovereign investigative powers. The wording of Article 30(2)(a) of the TEU should moreover be interpreted as excluding the participation of Europol officials in joint investigative teams of the Member States with “real” investigative powers (“in a support capacity”).

(a) the deployment of joint investigative teams is authorised in accordance with national law under the following terms: investigative actions are undertaken in Austria by Austrian officers pursuant to Austrian law; members of foreign security forces may be present during certain investigative actions, but may not themselves exercise any sovereign powers unless international law provides otherwise. Austria does not know to what extent other legal systems confer additional powers on members of foreign security forces or international organisations. Cooperation between officers from different countries is based on ongoing information exchange (requests for and provision of police cooperation).

It should be left to the participating States to determine the circumstances in which a joint investigative team should be deployed; an abstract description of the physical preconditions would reduce the flexibility (in the context of the current legal systems) that exists in this area at present and therefore seems ill-advised.
(b) The decision to deploy a joint investigative team is taken by the participating States.

There does not have to be a Europol representative on the team; joint investigative teams may also be deployed in areas of crime which do not fall within Europol’s remit.

(c) Investigations undertaken by a joint team are subject to the legal system of the territorial State (State in which the investigative action is undertaken) and as a result, are the ultimate responsibility of that State’s authorities. Fundamental management and coordination decisions on the activities of joint investigative teams are taken in agreement with the participating Member States.

Europol’s “support capacity” is to be seen as serving a practical function, in particular through quick access to Europol’s information databases, its links with evaluation groups and the fact that it can offer any specialist knowledge that proves necessary. The powers of the Europol officials concerned are established by the Europol Convention and, if necessary, by the legal system of the State in which the joint investigative team is operating. Accordingly, the actions of Europol officials operating in such circumstances are, in principle, attributable to Europol, whereas the exercise of powers conferred by the legal system of a Member State are attributable to that Member State.

(d) Austria has given a brief outline of the basic legal conditions in reply to (a) above.

(e) The investigative intelligence of joint teams is the sum of the investigative intelligence of the individual participating States which frequently work together in teams in the course of police cooperation. The legal systems of the participating States determine in which State and to what extent criminal proceedings are to be instigated and investigative intelligence used. Austrian legal provisions do not prevent the use of such investigative intelligence in criminal proceedings.
Since recourse to/ the exercise of sovereign powers is always based on a national legal order, legal protection is also governed by that same legal order. However, in the case of Joint Teams with “real” investigative powers, legal protection arrangements would be absolutely essential.

II. Re. Section B.I (2) "Other specific investigative actions"

(a) In particular, investigative actions which result from holding and appraising analysis projects in the framework of Europol could be considered.

(b) The involvement of Europol in such investigative actions can be inferred from the tasks of Europol set out in Article 3 of the Europol Convention. The corresponding decision-making powers are governed by the actual legal framework in question and by how far the investigations have come, meaning that sometimes decisions should be taken by the analysis team, sometimes by the participating States, and sometimes by just one of the participating States.

The coordinating role referred to should obviously not imply the authority to give instructions; the function of Europol here is not to coordinate but to promote coordination. In this instance, coordination is a function of the combined efforts of the Member States. Support will be afforded by fulfilling the duties of Europol pursuant to Article 3 of the Europol Convention. To this end Europol officials have the powers conferred upon them by the Europol Convention and, where appropriate, powers on the basis of the legal order of a Member State.
Re. Section B.1(3) "General questions"

(a) The involvement of prosecuting authorities from one State on the sovereign territory of another State does not have any intrinsic value. It is only necessary in cases where the authorities of the host State cannot ensure that the investigation will be successful, or that it will be completed in time.

There is not so much a need for uniformity as for a clear legal basis. In addition to the Schengen arrangements, in this context particular consideration should be given to the “Naples II” Convention on customs cooperation as indicative of the way forward.

(b) The authority which is to have judicial control of the proceedings can be inferred from the national legislation applicable for the particular investigation, or from the international law (European Union law?) applicable for a cross-border investigation. Accordingly, the judicial control of proceedings does not extend to the activities of a Europol official pursuant to the Europol Convention, and hence not to the involvement of Europol.

(c) On the basis of the Europol Convention, Article 38 thereof applies with respect to liability for unlawful acts of a Europol official. If a Europol official commits an unlawful act in exercising powers conferred by a national legal order then the liability law of that legal order applies.

(d) Whether it strictly follows that implementation of Article 30(2)(a) TEU requires legal acts within the meaning of Article 34(2) TEU to be adopted, as depicted, is still being studied, and consideration is being given to framework decisions or conventions pursuant to Article 34(2) TEU.

(e) The scenario depicted for the implementation of Article 30(2)(a) TEU would imply that there appears to be no need for a European Public Prosecutor’s Office nor for the ECJ to have criminal jurisdiction.
Re. Section B.II Article 30(2)(b) TEU

(1) The competent authorities of the Member States may investigate. Requests for investigations are not binding.

Under Austrian law requests of this nature are classed as letters rogatory from Europol in its capacity as a “security organisation” addressed to the competent Austrian security authority (Federal Ministry of the Interior). This would be possible under Article 4(2) of the Europol Convention, as the national unit for Austria is within the Federal Ministry of the Interior. The need for criminal proceedings to be instituted under national law depends on the findings of the investigation.

(2) The competent authorities of the Member States may coordinate. The coordinating role does not necessarily have any binding effect on any other Member States concerned. Neither is there any need for a binding effect of this nature, as it is in the best interests of the competent authorities concerned to take account of investigative aspects from another Member State in whichever way is most appropriate.

(3) The competent authority in Austria is the Federal Ministry of the Interior, as the addressee, by law, of letters rogatory from security organisations. If the request cannot be executed by a security authority and therefore has to be forwarded to a Public Prosecutor’s Office or a Court, the police mutual assistance channels are not followed and, as this is cannot be termed as mutual judicial assistance within the meaning of existing international standards, this creates a new form of cooperation. In this case, the request can only be interpreted as a mere suggestion to the Public Prosecutor’s Office or the Court that an investigation be conducted.

(4)(a) The exact point of the question in this place in the text is unclear – see above B.I (3) (a).
The role of Europol with regard to exercising the role set out in Article 30(2)(b) TEU will have to be settled while making provision for the corresponding powers in the Europol Convention. The issue here is not of judicial control of the proceedings by a public prosecutor/judge. National law contains provisions on conducting and coordinating investigations by the competent authorities of the Member States, and for Austria see the replies under (1) and (3).

The first case under Article 30(2)(b) TEU, on allowing Europol to ask the competent authorities of the Member States to conduct or coordinate investigations, has to be settled by supplementing the Europol Convention, so as to create a new task for Europol.

The development of specific expertise is not a legal obligation; the existing legal basis contained in Article 3(2) and (3) of the Europol Convention would have to already provide for the development of specific expertise, the second element in Article 30(2)(b) TEU.

III. Re Section B.III

At present no further specific measures are proposed. However, the term “in particular” makes it possible to avoid interpretation problems relating to incomprehensible differences in the wording of the objective of the measures listed (“organised crime”, "cross-border crime", “investigative acts”).
Re Section C "Other aspects of the implementation of No 43 of the Action Plan"

(1) (2) The possibility of Europol’s using data from alerts as a basis for its analyses should not be ruled out. The objective should be to give Europol direct access to SIS/EIS. The corresponding legal basis would have to be supplemented to this end, in particular Articles 101 and 102 of the Schengen Convention. However, it is uncertain as to whether under the Schengen Convention it would be admissible for a Member State which had not issued an alert to forward data from the SIS/EIS to Europol.

IV. Re Section D "Long-term measures pursuant to No 48 (a) of the Action Plan"

(1)(a) The current version of Articles 3(3) and 3(2) of the Europol Convention covers the objectives set in Article 30(2)(c) and (d) TEU.

(1)(b) The delegation agrees with the suggested meaning of the term.

(1)(c) Reference should be made to the term pursuant to Article 2(4) of the Europol Convention.

(1)(d) The development of expertise does not necessarily require a separate organisational unit to be set up, as this expertise can be sought from experts in the individual fields of crime. Europol does not necessarily have to be involved in the network that is to be established pursuant to Article 30(2)(d) TEU. Since the tasks set out in Article 3(3) of the Europol Convention are subject to the budgetary resources at its disposal, given past experience with how Europol’s draft budget is discussed, it would be wise to study the matter very closely.
Money laundering is not the only area in which Europol’s competence does not correspond to the scope outlined in the provisions, as its competence is limited to certain areas of crime. The wording of Article 30(1)(b) TEU should therefore not be taken to mean that Europol should be given a predominant role in dealing with information on suspect transactions, in particular.

ANNEX VI

RESPONSE BY THE FINNISH DELEGATION

During her Presidency Finland expressed clearly her position concerning document Europol 48. However, we repeat our position as requested by the Portuguese Presidency.

1) Concerning recommendation 43 about the urgency to set up joint investigation teams Finland emphasizes that this is one of her primary goals in short term. It should be carried out in a way which does not require the reopening of the Europol Convention. A framework decision would thus be a functioning solution. Anyway, Europol’s appropriate involvement in the work of the joint investigation teams must be guaranteed.

2) Concerning recommendation 44 about the setting up of a European Police Chiefs operational Task Force we think that it is a good initiative which should be put into practise without reopening of the Europol Convention. The Task Force could well be established in some kind of a working relation with the HENU-meeting or alternatively as a body sui generis. In any case a decision on the level of representation in this operational Task Force is needed. It should be a forum of Police Chiefs who are directly involved in operational decision making process in their own country and who have a close connection to Europol.

3) As to recommendation 45 about the necessary support and resources for Europol we think that it is of utmost importance that Europol receives adequate budgetary, human and technical resources and that all Member States use Europol effectively also by feeding it with relevant information.

As regards receiving of operational data by Europol it must be noted that the Europol
Convention already enables Europol to receive operational data from Member States. If this has not always been the case in practice the system for transferring of data to Europol could surely be further developed without amending the Europol Convention.
Also concerning the issue of Europol to ask Member State to start investigations we think that it could be carried out without amendments to the Europol Convention. Perhaps a framework decision would be an appropriate instrument to give this issue a more solid basis in the Member States’ legal framework.

4) As to the recommendation 46 on relation between Europol and Eurojust we think that it is necessary to get more detailed information about Eurojust and its future role before expressing firm opinions. In any case national consultations with the Ministries of Justice are needed and on EU level the decisions should be drafted jointly by relevant working groups.

Eurojust – which will be a forum of judicial authorities – should support the law enforcement operational activities. The added value of Eurojust will be in the fact that it brings different judicial authorities closer to each other for cooperation in their everyday work. The police should be directly involved in this work in practise because in many countries, e.g. in Finland, the police is considered to be one of the judicial authorities.

5) As to the recommendation 51 on tracing, seizure and confiscation of proceeds of crime we agree with the statement that economic crime is in the very heart of organised crime. We think that Europol should play a role in this respect first and foremost by providing relevant data to Member States.

If the intention of the recommendation is that Europol’s role should go beyond exchanging of information it should be studied carefully whether there is a need to amend the Europol Convention accordingly or not.

6) As to the recommendation 56 on extending Europol’s mandate to money laundering in general we think that it requires amending of the Europol Convention. Realizing the fact that money laundering is one of the key issues in terms of organised crime Finland is ready to reopen the Europol Convention for the purpose of including money laundering to the mandate of Europol.
RESPONSE BY THE SPANISH DELEGATION

The Spanish delegation considers, re point 1 of the introduction to the document, that application of both Article 30 of the Amsterdam Treaty and the Tampere Council recommendations on widening Europol operational and executive powers is fully compatible with the current legislative framework of the Europol Convention. It therefore sees no need to make changes involving amendment of the Convention, with the delay that would entail.

On point two of "First reflections concerning the Tampere Conclusions as far as they relate to Europol", the Spanish delegation wishes to make the following points:

**Recommendation 43** – First, the Tampere Council recommendations to which this document refers are all set out in Section C of the Conclusions under the Title "A Union-wide fight against crime".

Starting from that premise, we consider that the Joint Teams referred to in the recommendation could consist of police and customs officers (in line with their powers respective at national level under Europol), from various EU countries, with Europol support.

Following this line of reasoning, the Spanish delegation considers that, with the current Europol Convention and on the basis of national legislation, international joint investigation teams could perfectly well be set up, within the European Union framework, to prevent and fight organised crime, with support by Europol staff, but with operations at all times led and conducted by team members who are nationals of the host country, so that the rest of the team has support functions.
Recommendation 44 – Spain considers that acting on this recommendation is closely linked to the work beginning within the Europol Management Board on the Belgo-Dutch proposal on the development of Europol and the role of the Heads of Europol National Units (HENUs) and of its own Management Board.

The Spanish delegation considers that use should be made of the existing structure within Europol so that this European Police Chiefs' operational task Force is structured around HENU meetings, to beef up the most operational approaches and provide a more dynamic HENU forum (Heads of Europol National Units, accompanied by their respective operational police chiefs with national responsibility in the areas of Europol competence) in which to address in optimal conditions the functions outlined in the recommendation.

This will ensure the requisite coordination between this Police Chiefs' operational task Force and Europol and the Third Pillar structure, to avoid overlapping and duplicating activities which must of necessity be carried out by the HENUs, the Management Board and Europol itself, the operating potential of which would thus be satisfactorily enhanced.

National operating units could also be brought closer to Europol with greater involvement in its operations, by more active management participation in the work of identifying joint problems and planning possible solutions.

The European Police Chiefs' operational task Force should not be a Third Pillar working party as it would then be hard to give it the dynamic and clearly police focus the recommendation seems to require.

Recommendation 45 – On this point the Spanish delegation would emphasize that there is no need to amend the Europol Convention since it allows Europol not only to receive operational data but also to process, analyse and disseminate the information and resulting intelligence.
We also think that if, within its sphere of competence, Europol is aware of or in possession of data or information on the actions of certain persons in the context of organised cross-border crime within the EU, it must communicate it to the countries affected. Logic requires an appropriate response to this Europol initiative in the processing or action to be taken on such information, either by opening relevant enquiries or announcing that they are already underway.

**Recommendation 46** – This recommendation is to set up the EUROJUST unit, composed of professionals with different backgrounds and competences (prosecutors, magistrates or police officers of equivalent competence) with the task of facilitating the coordination of criminal investigations and cooperating closely with the European Judicial Network.

The functions of each of these professionals in the majority of European Union Member States are different and complementary, and their functional and territorial powers do not coincide, which is why we must first define the composition of this Unit, what we want it to do, what area of responsibility it is going to cover in the fight against crime at EU level, in order then to determine who should be in it and with whom it should be linked and in what way.

**Recommendation 51** - Europol must be able to carry out the same activities in respect of money laundering as for the rest of its functional powers for the reception, processing and analysis of data and information relevant to the performance of its tasks.
Recommendation 56 – In the opinion of the Spanish delegation the only possibility for generally giving Europol competence in the field of money laundering connected with organised crime affecting two or more EU countries, is for Europol to take on each and every competence listed in the corresponding Annex to the Europol Convention, to which Article 2 thereof refers. No amendment to the Convention is entailed by this approach which uses the procedure laid down in Article 2(2) of the Convention.

With regard to the Annex to 13370/99 EUROPOL 48 outlining scenarios for actions by Joint Teams, with Europol acting in a coordinating or support role, we consider it too early to define such scenarios until fundamental agreement has been reached on action by these joint teams.

As we have indicated at various points in this paper, the Spanish delegation considers that these joint teams must act within the legislative framework of the current Europol Convention, in punctilious observance of national law, which is why we must stick to the principle that Joint Team action must at all times be led and conducted by police officers originating in the host country, taking on coordination and support functions for the others, including Europol staff, who will still have support functions.

ANNEX VIII

RESPONSE BY THE UK DELEGATION

Recommendation 43 - Joint Investigation teams

We welcomed your view as the Working Group meeting that joint investigation teams should be implemented without undue delay and that the re-opening of the Europol Convention will not be necessary to achieve this. The Tampere Conclusions gave a clear mandate that teams should be formally set up urgently reinforcing what had been set out in the Amsterdam Treaty. The reopening of the Convention and the work that this would entail even if the mandate is kept very limited will delay the process unnecessarily. We share the view that a framework decision will provide the necessary solution.
Annex - Scenario for joint teams

We are generally content with this paper. However, we believe that Europol should only be part of the process where it can add value within its mandated fields. We are not convinced that it will always be necessary for Europol personnel to be physically present in the Member States where operations are being conducted. We also have some concern over the scenarios for how a joint team will be initiated. We believe that a combination of the two scenarios a) and b) is preferable. I attach a possible amendment.

Recommendation 44 - European Police Chiefs Operational Task Force

As I indicated at the meeting we consider that it is for the Article 36 Committee to make a decision about where the Task Force will sit within the Council structure and to offer a steer on the best way to take the initiative forward.
Very briefly, we are certain that the Task Force should consist of very senior level law enforcement officers who have the power to commit resources. In addition, we do not believe that it is appropriate or desirable or consistent with the Tampere recommendations for the Task Force to be a working group of Europol, although it will be essential for the Task Force to forge a good working relationship with them.

**Recommendation 45**

**Necessary support and resources**
No comments.

**Receiving operational data**
We believe that consideration needs to be given to how Europol will store « operational data ». Article 10 of the Europol Convention is quite specific concerning the handling and storage of personal « operational » data within the Europol Computer system. The « Analytical Work File » system being the only approved method.

**Europol to ask Member States to start investigations**
We do not believe that it will be necessary to re-open the Convention to achieve this.

**Recommendation 46 - Eurojust**

We consider it necessary to have further details of the purpose and role of Eurojust before we can offer substantial or meaningful comments on its interaction with Europol.
Recommendation 51 - Transfer and analysis of operational data

We believe that the tracing, seizure and confiscation of the proceeds of crime is not the same as money laundering. Careful analysis of the Tampere conclusions is required before we can be certain that this is what was intended or before Europol’s mandate is extended to cover these areas.

Recommendation 56 - Money laundering

We consider that the extension of Europol’s mandate to cover money laundering will probably require the re-opening of the Convention. However, if this is necessary we consider that it should be done in a highly restricted and constructive way. The Convention should be re-opened for this specific purpose only.
Scenario for Joint Teams with Member States representatives having national functions and powers and Europol in a co-ordinating or support role

1. There are 2 scenarios for the formation of joint teams:

   a) A case is started in a Member State and the competent law enforcement agency recognises the international dimension at an early stage. The Member State initiates a Joint Investigation Team with other Member States involvement and requests Europol’s participation.

   b) Europol receives information on an international case via information exchange, or as a result of the final outcome of intelligence work, Europol identifies criminal organisations acting on an international level in differing Member States. Europol draws this information to the attention of Member States who make a decision about the appropriateness of forming a joint team.

2. Europol will have a role in promoting Joint Investigation Teams, when, as an outcome of its intelligence activities, Joint Investigation Teams will be established in order to target serious international crime at the operational level.

3. These Joint Investigation Teams would operate on the basis of the project-based approach detailed within CRIMORG 167.

ANNEX IX

RESPONSE BY THE FRENCH DELEGATION

1- **Recommendation 43: Joint investigative teams**

France thinks that the reference text for the operation of joint investigative teams must be Article 13 of the European Convention on Mutual Assistance in Criminal Matters.
In order to set up joint investigative teams without delay, as stipulated in the Tampere European Council conclusions, France proposes that the Council adopt a decision including, following the opinion of the Europol Management Board, the principle that Europol officers should take part in the joint investigative teams for Europol missions. The joint teams would operate in accordance with national law and in the specific area laid down by the Tampere Council.

That decision should specify that, within the limits of the objectives pursued, one-off exchanges of information between members of a joint investigative team are acceptable. All information for entry in a data base or inclusion in a judicial procedure must, on the other hand, follow the path laid down in the Europol Convention.

2- **Recommendation 44: Operational Task Force**

It is not desirable for this Task Force to be set up within the Europol framework. It should be a vehicle for operational directors to exchange views. Task Force meetings should be held in the country of the Presidency. Institutionally, the Task Force should be directly answerable to Coreper.
3- **Recommendation 45: Access to operational data**

Refusal to give Europol access to the contents of the SIS data bases. Such a request would entail amendment of the Europol and Schengen Conventions. France is against giving Europol access to the contents of the SIS data bases.

A "request" from Europol, under Article 30 of the Amsterdam Treaty, asking Member States to conduct or coordinate their investigations would not be of a binding nature as there is nothing in current French law authorising the principle of supranational control on action by the competent authorities.

4- **Recommendation 46: EUROJUST**

Thinking on EUROJUST is not sufficiently advanced to respond on this point here and now.

5- **Recommendation 51: Analysis and transfer of operational data on areas relating to money laundering**

No response can be given on this point which is linked to Recommendation 56.

6- **Recommendation 56: Europol competence on money laundering**

Since this point is not covered in the initial Convention, the Europol Convention will need to be amended. However, we must move forward on this point.
Conclusion

France would also like these issues discussed by the Article 36 Committee which might refer them to the competent working party.

ANNEX X

RESPONSE BY THE GREEK DELEGATION

It should be noted that our answers to the above reference are the first remarks and not the final position of our country.

Answering to the posed questions, we let you know the following:

Article 43

1. Joint Investigating Teams

The European Council calls for immediate setting up of joint investigating teams as foreseen in the Treaty with participation of representatives of Europol in a support capacity.

a. The setting up of joint teams should take place in particular serious cases after a request of one or more Member States and if two Member States, at least, are involved in the case. A representative of EUROPOL will participate in these teams in a support capacity. EUROPOL must provide, in any such case, all available necessary means for the successful outcome of the case.

b. As legal basis, for the operational activities of the joint teams, the adopted legal instrument, depending on the case, from those foreseen in the Article 34 of the E.U.C. (e.g. by issuing of the Council’s Decisions, e.t.c.). The different criminal procedural rules will still apply, when the national law is called for realization of these actions.
In this case, of course, autonomy and peculiarity of the national preliminary examining systems still apply.
c. The use of information gathered by the joint teams will be secured through the national provisions concerning confidentiality of information and protection of personal data. However, this securing is uncertain in the case of applying of the national law, when it concerns participant officers from third States.

d. The members of the joint teams act within the frameworks of their obligations arising from the respective national provisions and the provisions of the EUROPOL’s Convention.

**Article 44**

The European Council calls for the establishment of a European Police Chiefs Operational Task Force to exchange, in co-operation with Europol, experiences and to promote operational and practical co-operation in the fight against the cross-border crime.

As regards this matter, we think it advisable to wait for the conclusions arising from the meeting of the Police Chiefs, which will be held in Lisbon, concerning this matter.

**Article 45**

The European Council calls for the Council to provide EUROPOL with:

a. The necessary resources and support,

b. Strengthening the EUROPOL’s role by means of receiving operational data from the Member States,
c. **Authorizing EUROPOL to ask Member States to initiate or co-ordinate investigations.**

- We agree that EUROPOL should be provided for by the necessary resources in the context of EUROPOL’s budget, always in connection with the assigned duties. Also, we support the co-operation frameworks created by the EUROPOL’s Convention for its better performance by the Member States.

- As regards strengthening of EUROPOL through reception of operational data, under the present conditions transmission of information can be done for analytical reasons, through the National Units, not for their own use but for supporting reasons.

Therefore, it should be further clarified for what purpose, where and why EUROPOL needs operational data.

For any act, above and beyond these three presuppositions, amendment of the EUROPOL’s Convention and other EUROPOL’s Regulations will be requested (Regulations concerning work of Analysis, privileges and immunities, etc.).

- As regards opening of investigations under the Article 2 (4) of the EUROPOL’s Convention, EUROPOL can be addressed to all competent authorities of the Member States for prevention and suppression of the crime.

Under the Article 4 (2) of the Convention, EUROPOL address requests through the National Units. We should examine the new capacity of the Article 30, par. 2 (b) of the EUROPOL Implementation Convention through which EUROPOL requests from the Member States to initiate or co-ordinate an investigation.

The point is in what extent this request should be realized and in what extent there is an obligation to inform EUROPOL on the result.

In this last case, perhaps it is necessary to amend the Convention in order to include the proper realization by the Member States.
Article 46

To reinforce the fight against serious crime, the European Council has agreed that a Unit (EUROJUST) should be set up composed of national prosecutors, magistrates or police officers of equivalent competence, detached from each Member State according to its legal system.

The relationships between this Unit and EUROPOL should be examined and any official positions will request amendment of the Convention.

Article 51

The European Council is determined to ensure that concrete steps are taken to trace, freeze, seize and confiscate the proceeds of crime.

The question concerns the matter if EUROPOL should play a role regarding transmission and analysis of operational data relating to trace, freezing, seizure and confiscation of crime’s proceeds. (Money laundering).

Article 56

The European Council invites the Council to extend the competence of EUROPOL to Money laundering in general, regardless of the time of offence from which the laundered proceeds originate.

In the present stage, EUROPOL is responsible for the money laundering if it is related to any of its competences. As regards a general competence on money laundering, amendment of the Convention is requested.
ANNEX XI

RESPONSE BY THE EUROPOL DELEGATION

As it was pointed out in the former Finnish Presidency’s paper, the Tampere Conclusions as well as the provisions of Article 30 paragraph 2 of the Treaty of the European Union delineate the next steps forward in the development of European law enforcement co-operation. As far as the role of Europol is concerned, it will be important to find the right balance between supporting the consolidation of the European police office within the existing structure and, on the other hand, preparing the implementation of new means to improve law enforcement co-operation at the European level. From Europol’s point of view it would be advantageous if the discussion on the implementation of the Tampere conclusions and Article 30 paragraph 2 TEU would commence with a prioritisation of issues to be discussed. This is of special interest given that the Treaty of the European Union foresees in Article 30 time limits for the implementation of new measures concerning Europol. In addition, the Action Plan of the Council and the Commission dating from 4 December 1998 foresees the drawing up of an adequate legal instrument extending Europol’s powers to the activities referred to in Article 30 (2) TEU within two years. (Details of the timeframe are included in the annex attached to this document.) Within this context it might also be worthwhile to take into consideration the first deliberations on the implementation of Article 30 of the Treaty of the European Union that were held under the German Presidency.¹

This note aims to indicate shortly Europol’s considerations on the questions that were raised in the former Finish Presidency’s paper on the conclusions of Tampere as far as they relate to Europol. Generally, a distinction was made between issues that could be accomplished without changing the legal background and, on the other hand, areas of co-operation where new legal instruments might need to be implemented.

¹ Council document 6245/99 EUROPOL 7 (26 February 1999); Europol doc. 3100-18 (26 April 1999)
ad 2 i) Joint teams

As regards the establishment of Joint Teams, from Europol’s perspective two topics have to be considered separately. Firstly, the actual hindrances in the work of law enforcement officials from different Member States that come together for individual investigations could be addressed. This form of Joint Team co-operation is taking place on a nearly day to day basis, with or without participation of Europol officials. Different obstacles in their work were registered by the people involved. For example, the exact role and powers of the members of a Joint Team are not always clearly defined. It might be useful to regularly exchange experiences on what is actually possible within the limits of national law. Another topic that is raised by practitioners is the involvement of public prosecutors or other members of judicial bodies in the course of a joint investigation. Depending on the procedural law of the Member States involved, a form of participation of members of the judicial authorities that might lead to an uncomplicated way of exchanging evidence gained in the investigation might be feasible. Furthermore, the decision making process within a Joint Team investigation could be addressed - it could be discussed whether it might be beneficial to formalise the working procedures of a Joint Team investigation. An issue to be kept in mind are the rights and obligations (privileges and immunities) for the members of the joint teams (including the supporting Europol officials) when acting in the European Union Member States. Last but not least, budget related issues that have to be solved in the course of a common investigation, including the role that Europol could play in this respect, might be an issue for further consideration. Europol would like to propose an initial meeting with officials from the Member States and Europol who were already involved in Joint Team investigations to discuss procedural questions and identify cases where concrete projects could be set up.

From Europol’s point of view, the aim should be to go for the “quick wins” that are within reach within the existing legal framework: multi-national investigations for shorter periods of time, striving to bring down an organised criminal structure effectively. Europol is fully convinced that positive, practical results, are the most convincing arguments for this way of working and are as well helping to reveal obstacles which still remain.
Looking a little bit further into the future, the experiences gained in the first phase should be used as a basis for discussions on, firstly, the goals to be achieved via changing the legal framework, and secondly, the kind of legal instruments that could facilitate further co-operation. This could for instance be a framework decision to harmonise national legislation and to standardise the role and powers of the members of Joint Teams in all Member States, or a Council decision to define procedures in the setting-up and carrying out of a Joint Team investigation.

ad 2 ii) European Police Chiefs operational Task Force

Europol welcomes the European Council’s call 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. Europol sees two principal tasks for this Task Force: firstly to develop and co-ordinate strategies and priorities at the international level and to advise insofar also the political decision makers, and secondly to ensure that these priorities are implemented at the national level. Clearly there should be a close co-operation between the Task Force and Europol, as already indicated in the Tampere conclusions. Europol holds specialist knowledge on operational co-operation in combating cross-border crime. In addition, resulting from its strategic reports, threat assessments and risk analysis, Europol is capable to support the European Police Chiefs in their different tasks.

Europol would also be ideally placed not only to be a competent member of this committee but also to assume the role of Secretariat to the Task Force. Our preference would be that the Task Force is established within the framework of Europol. One possible option could be to combine the tasks and functions of the Europol Management Board with the European Police Chiefs Task Force. But it seems to us that the role and tasks of the two bodies are not similar enough and probably even not compatible with each other. Another alternative could be to establish the European Police Chiefs Task Force as a permanent “HENU plus” working group and so to take up former ideas and proposals. However, the relation between the actual HENU meeting and such a “HENU plus” meeting may become difficult. In addition, this solution would also exclude the chiefs of national
law enforcement agencies which do not host the Europol National Unit. Therefore, it would be preferable to establish a group sui generis, which would, following the Europol multi agency-approach, enable the Heads of all law enforcement agencies in the Member States to participate in the Task Force. It should be stressed that there is no need at all to amend the Europol Convention for this to be possible.

ad 2 iii) Resources / operational data / Europol to ask Member States to start investigations

As a general point, it is worth mentioning that in the past Europol’s mandate was extended with new crime areas as well as with new functions (e.g. the Centres of Excellence). To be able to fulfil its tasks, Europol cannot change priorities and take away resources from other important assignments. For the extension of its mandate and functions Europol will in the future need increased resources – human resources, but also technical and financial resources. Also, not only the resources of Europol, but also those of the Europol National Units should be increased, because without their capacity to deal with ever more tasks and functions, Europol can not be successful.

Already in May 1998 the Council of the European Union decided on 50 new posts for Europol per year. The necessity to provide Europol with needed support and resources was now reiterated by the Tampere Conclusions. These two declarations for a well-equipped Europol should also be taken into consideration by the evaluation team that will perform its tasks in the next few months.

As regards receiving of operational data, it has to be highlighted that already Article 4 of the Europol Convention states that it is the task of the National Units to supply Europol with the information and intelligence necessary for it to carry out its tasks and to respond to Europol’s requests for information, intelligence and advice. It follows from this provision that Member States should ensure that organisational preconditions for their Europol National Units to fulfil their tasks are met. Also, it is their responsibility to alleviate, wherever possible, legal hindrances to the supply of information. The significance of the tasks of the Member States was now confirmed by the European Council in Tampere. As a final point, it should be stressed that it is possible to follow the European Council’s conclusions within the limits of the existing Convention.
As to the issue of asking Member States to start investigations, the document provides some interesting ideas on possible Member States' obligations in this respect. Although the paper does not suggest this, a Framework Decision could very well ensure that this issue is harmonised. Given the fact that such Framework Decisions need to be implemented in national law, this could give Europol a much more solid basis in these procedures. This could be well-combined with the Framework decision mentioned under point 1, since these issues are obviously related.

**Ad 2 iv) Relation between Europol and Eurojust**

Our current understanding of Eurojust is that its main tasks will be to enhance the implementation of the already existing possibilities for Mutual Legal Assistance, and also play a role in Joint Team efforts. For this reason, we do not see Eurojust as a controlling or supervisory body towards Europol, but as a parallel effort to improve international investigations and prosecutions. This obviously calls for a close co-operation, wherever necessary, between Europol and Eurojust, especially in the area of support through analyses. Mutual participation in meetings is envisaged. Given the uncertainty of the specific tasks of Eurojust, it is almost impossible to determine whether or not the Europol Convention would need to be amended because of the relation between Eurojust and Europol.

**ad 2 v) Europol’s role regarding financial crime**

The question raised in the Presidency paper has to be answered with a clear “yes”. Tracing, freezing, seizure and confiscation of proceeds of crime and all other aspects of money laundering are of pivotal interest for an effective strategy to fight organised crime on the European level. Therefore, within the context of the discussions on the extension of Europol's task related to Money Laundering, it should be clarified that these powers also relate to co-operation relating to tracing, freezing seizure and confiscation.
ad 2 vi) General competence in the field of money laundering

As stated above, there is a clear practical need to equip Europol with the required powers to be able to tackle proceeds of crime on a general basis. This is also supported by Article 30 (1) of the Treaty on the European Union where it is stated that the collection, storage, processing, analysis and exchange of information held by law enforcement services on reports on suspicious financial transaction shall be a field of common action in the area of European police co-operation. The European Council at its meeting in Tampere was also very clear in its invitation to the Council to extend the competence of Europol to money laundering in general, regardless of the type of offence from which the laundered proceeds originate. Taking into account the practical need as well as the request of the European Council high priority should be given to amending the mandate of Europol with a general competence in the field money laundering. Such an amendment of the Convention would also provide for an appropriate legal basis for a database on suspicious transactions within Europol.

An alternative solution could be sought on the basis of Article 43 (3) of the Convention (amplifying, amending, supplementing or introducing of new definitions of forms of crime as already included in Annex II), but our current position is that this would not be the best way of proceeding, given that the introduction of Money Laundering in general on the list is not a new definition of a form of crime already included, but the introduction of a new form of crime in the Annex.
### ANNEX TO THE RESPONSE BY THE EUROPOL DELEGATION

The following table lists the tasks related to Europol which are defined in doc. JAI 41, doc. CRIMORG 80 and Art. 30 TEU:

<table>
<thead>
<tr>
<th>Tasks</th>
<th>Target dates</th>
<th>Sources</th>
</tr>
</thead>
<tbody>
<tr>
<td>Database on pending investigations</td>
<td>31.12.00 31.07.01</td>
<td>JAI 41 para. 43 (a)(I)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>CRIMORG 80, rec. 30</td>
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<tr>
<td>Documentary work towards operational activity</td>
<td>31.12.00 31.12.03</td>
<td>JAI 41 para. 43 (a)(ii)</td>
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<tr>
<td></td>
<td></td>
<td>CRIMORG 80, rec. 32</td>
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<tr>
<td>Illegal immigration network – operational co-operation</td>
<td>31.12.00 31.12.01</td>
<td>JAI 41 para. 43 (a)(iii)</td>
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<tr>
<td></td>
<td></td>
<td>CRIMORG 80, rec. 26</td>
</tr>
<tr>
<td>Reinforce exchange of information in combating terrorism</td>
<td>31.12.00 31.07.01</td>
<td>JAI 41 para. 43 (a)(iv)</td>
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<tr>
<td></td>
<td></td>
<td>CRIMORG 80, rec. 33</td>
</tr>
<tr>
<td>Extend competencies of Europol</td>
<td>31.12.00 31.07.01</td>
<td>JAI 41 para. 43 (a)(v)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>CRIMORG 80, rec. 34</td>
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<tr>
<td>Draw up a legal instrument for implementation of Art. 30(2)TEU</td>
<td>31.12.00 31.07.01</td>
<td>JAI 41 para. 43 (b)</td>
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<tr>
<td></td>
<td></td>
<td>CRIMORG 80, rec. 35</td>
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<tr>
<td>Access SIS</td>
<td>31.12.00 31.12.01 31.12.03 (review)</td>
<td>JAI 41 para. 43 (c)</td>
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<tr>
<td></td>
<td></td>
<td>CRIMORG 80, rec. 36</td>
</tr>
<tr>
<td>Develop role of Europol conc. exchange of information with PAPEG</td>
<td>31.12.00 31.07.01</td>
<td>JAI 41 para. 43 (d)</td>
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<tr>
<td>countries</td>
<td></td>
<td>CRIMORG 80, rec. 65</td>
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<tr>
<td>Common evaluation of particular investigative techniques</td>
<td>31.12.00 ongoing act.</td>
<td>JAI 41 para. 44 (a)</td>
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<tr>
<td></td>
<td></td>
<td>CRIMORG 80, rec. 24</td>
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<tr>
<td></td>
<td></td>
<td>Art. 30 (1)(d)TEU</td>
</tr>
<tr>
<td>Consideration under which law enforcement agencies could operate in</td>
<td>31.12.00</td>
<td>JAI 41 para. 44 (b)</td>
</tr>
<tr>
<td>the territory of another Member State</td>
<td></td>
<td>Art. 32 TEU</td>
</tr>
<tr>
<td>Operational and technical co-operation; Europol = serve as a back-up</td>
<td>31.12.00 31.12.02</td>
<td>JAI 41 para. 44 (c)</td>
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<td>for future initiatives; Standards for investigations</td>
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<td>CRIMORG 80, rec. 27</td>
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<td>Organised Crime Situation Report; harmonising of analysis parameters;</td>
<td>31.12.00 ongoing act.</td>
<td>JAI 41 para. 44 (d)</td>
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<tr>
<td>identifying emerging trends</td>
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<td>CIS and Naples II implementation</td>
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<td>JAI 41 para. 44 (e)</td>
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<tr>
<td>Promote liaison arrangements between prosecutor and investigations</td>
<td>01.10.03 31.12.02</td>
<td>JAI 41 para. 48 (a)(I)</td>
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<td>officials</td>
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<td>CRIMORG 80, rec. 50</td>
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<tr>
<td></td>
<td></td>
<td>Art. 30(2)(c)TEU</td>
</tr>
<tr>
<td>Activity</td>
<td>Start Date</td>
<td>End Date</td>
</tr>
<tr>
<td>-------------------------------------------------------------------------</td>
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</tr>
<tr>
<td>Develop a research and documentation network</td>
<td>01.10.03</td>
<td>31.12.03</td>
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<tr>
<td>Improve statistics on cross-border-crime</td>
<td>01.10.03</td>
<td>31.12.00</td>
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<tr>
<td>Setup a system for information and analysis on money laundering</td>
<td>01.10.03</td>
<td>31.12.01</td>
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<tr>
<td>CIS access</td>
<td>01.10.03</td>
<td></td>
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<tr>
<td>Media information strategy</td>
<td>01.10.03</td>
<td>31.12.03</td>
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<tr>
<td>Exchange of fingerprints electronically</td>
<td>01.10.03</td>
<td>31.12.03</td>
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<tr>
<td>Proposal for benchmarking of the effectiveness of OC-investigations, adjudication and prosecution</td>
<td>31.12.04</td>
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<tr>
<td>Prevention: Co-operate in the preparation of a comprehensive report</td>
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<tr>
<td>Prevention: Study on application of the opportunity reductive approach of specific forms of OC (organized economic crime)</td>
<td>31.12.00</td>
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<tr>
<td>Prevention: Study on “successful approaches on best practices”</td>
<td>31.12.00</td>
<td></td>
</tr>
<tr>
<td>Rapid exchange of information on trends in specific crime areas</td>
<td>31.12.00</td>
<td></td>
</tr>
<tr>
<td>Mutual evaluation</td>
<td>31.12.00</td>
<td></td>
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<tr>
<td>Review of the possibilities of greater flexibility in the use of EU-funds to support joint investigations teams</td>
<td>31.12.01</td>
<td></td>
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<tr>
<td>Training of law enforcement personnel</td>
<td>31.12.03</td>
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<tr>
<td>Study of the possible role of Europol in coordinating international investigations and task forces to combat criminal organisations</td>
<td>31.07.01</td>
<td></td>
</tr>
<tr>
<td>Role and place of judicial authorities in the framework of the development of Europol</td>
<td>31.07.01</td>
<td></td>
</tr>
<tr>
<td>Integration of applicant countries into the annual Situation Report on OC</td>
<td>Ongoing act.</td>
<td></td>
</tr>
<tr>
<td>Closer co-operation with Third States and international organisations and bodies</td>
<td>Ongoing act.</td>
<td></td>
</tr>
</tbody>
</table>

**ANNEX XII**
GERMAN DELEGATION’S POSITION

The German delegation enters a provisional scrutiny reservation on the reference document and its position for the time being is as follows:

1. **Joint Investigation Teams**

   (EUROPOL 48 paragraph 2(i), point 43 of the Tampere Conclusions)

Point 43 of the Tampere Conclusions reflects the substance of the measure setting up joint investigative teams already provided for in Article 30(2)(a) of the EU Treaty and in the Vienna Action Plan of 1998. Over and above this, it calls only for joint investigative teams for the criminal activities in question to be set up "without delay".

The debate on the participation of EUROPOL in the joint investigative teams was opened under the German presidency on the basis of EUROPOL 7. The conclusion in EUROPOL 29 was that the investigations of the joint team would be conducted under the direction of the Member States concerned, on the basis of the relevant national law. It was agreed that Europol staff would have no independent powers; their role would be purely supportive and advisory.

This view is in conformity with the text of both Article 30(2)(a) of the EU Treaty and the related text of the Vienna Action Plan of 1998 and Point 43 of the Tampere conclusions.

As joint investigative teams can be engaged solely for the purposes of a criminal investigation, it is logical that the legal basis for joint investigative teams has been included in the draft Convention on Mutual Assistance in Criminal Matters between the Union's Member States (Article 13). Article 13 of this draft intentionally omits a more precise description of the form of participation of EUROPOL staff and simply contains an enabling clause.
We see no need for a legal act replacing the future Convention on Mutual Assistance in respect of the deployment of joint investigative teams in which EUROPOL participates.

How far the enabling clause in Article 13(11) of the Draft Convention on Mutual Assistance authorises EUROPOL staff to participate in the activities of the joint investigative team and what supplementary legal bases are required for EUROPOL to promote the activity of the joint investigative teams – where appropriate in accordance with the Convention on Mutual Assistance – needs further examination.

Also significant here is what precisely is meant by a merely "supportive" role for EUROPOL; this should be clarified before there can be any examination of the legal aspects of the question whether there is any need to amend the Europol Convention.

In this connection, the following points should be made re the Annex "Scenario for Joint Teams":

- The terminology provisions in the introductory passage should be supplemented by a basic definition or description of the term "Joint Teams" (in accordance with the draft Convention on Mutual Assistance between the Member States of the European Union).
- "Lead authority" for Joint Team investigations can only be an organisation or body from the Member State concerned, not EUROPOL, which has a purely supportive role.
- The role of the judicial authorities in setting up a joint team as well as their positions should also be clarified as, at least according to German law on criminal procedure, the Public Prosecutor's Office either conducts investigations itself or has them carried out by police force authorities and officials.
- It should also be made clear that the role of EUROPOL is purely one of initiating the setting-up of joint investigative teams.
- As EUROPOL’s integration depends on whether its mandate under Article 2 of the Europol Convention extends to the crimes in question, the question of how to proceed when the crimes lie partly within and partly outside that mandate also needs to be resolved.
As EUROPOL's participation in the joint investigative team has been specifically requested, questions relating to the further development of Europol – inter alia through participation in joint investigative teams – should be clarified through theme-related joint discussions between the Europol and Judicial Cooperation Working Parties or by setting up an ad hoc Police/Justice Working Party.

2. Requests for investigations by EUROPOL

(EUROPOL 48, paragraph 2(iii), Tampere conclusions point 45)

As a result of previous discussions on this question, the conclusion in EUROPOL 29 was that requests for investigations by EUROPOL could not be binding, as it could only play a supportive role. EUROPOL 48 already refers to the fact that procedures differ in the Member States because of differing legal systems (is action taken by law enforcement bodies subject to the principle of legality?).

3. Access to SIS and CIS data

EUROPOL must first give reasonable justification for requiring access to operative SIS and CIS data.

4. Operative Task Force

(EUROPOL 48, paragraph 2(ii), Tampere conclusions point 44)

The question of how the operational Task Force is to be incorporated into the institutional framework of the Third Pillar has already been discussed in the Article 36 Committee but not yet conclusively decided.
For the German delegation, the point is to avoid duplicating work and competence with the Article 36 Committee, on the one hand, and with Europol bodies, on the other.

5. **Relationship with EUROJUST**

(EUROPOL 48 – point 2(iv) – Tampere conclusions point 46)

It remains to be seen what structure and tasks EUROJUST will be given.

6. **Money laundering**

(EUROPOL 48 – point 2(v) and (vi) – Tampere conclusions points 51 and 56)

Extending Europol's mandate to "competence in general" for money laundering in any case means that the EUROPOL Convention will have to be amended with all that this entails. What is meant by "competence in general" should also be clarified. Efforts are currently under way to align further the list of predicate offences in the individual EU Member States.

We do not advocate extending the mandate to money laundering in connection with every conceivable criminal offence.