1. According to Article 30 (2) point a of the Treaty on European Union, the Council promotes cooperation through Europol by inter alia enabling Europol "to facilitate and support the preparation, and to encourage the coordination and carrying out, of specific investigative actions by the competent authorities of the Member States, including operational actions of joint teams comprising representatives of Europol in a support capacity."

2. Based on this concept, the European Council in Tampere has called for joint investigative teams 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.
3. Article 13 of the Convention on Mutual Assistance in Criminal Matters, signed on 29 May 2000, provides for a legal framework for the setting up of joint investigation teams. Article 13 (12) contains a clause generally allowing Europol officials to participate in the joint investigation team, to the extent that the applicable laws of the Member States concerned permit.

4. It is however questionable if the Europol Convention also permits the participation of Europol officials in such joint investigation teams.

The Legal Service of the Council commented on this issue in its contribution (9632/00 JUR 212 EUROPOL 17) as follows:

“A participation of Europol officials in Joint Teams, in the sense of Article 13 of the Convention on Mutual Assistance would imply that such officials would exchange information directly with the other members of each Team, including information held by Europol, without the involvement of the national units of the Member States having set up the Teams. Such an exchange of information should have a clear legal basis, which the Europol Convention as presently worked out and structured, does not provide.“

In so far as the support activities of Europol go beyond the rules and procedures of the Europol Convention, the Legal Service believes that amending the Europol Conventions as regards the procedure referred to in Article 43 (1) of this Convention would hence be necessary.

5. With Document 9639/00 EUROPOL 18, the French Presidency has submitted a draft Council Recommendation in respect of Europol’s assistance to joint investigative teams created by the Member states. There is agreement that the submitted draft is intended to merely describe Europol’s support activities under the applicable Convention.
6. In the light of the discussions of the Council Working Group on Europol on 4 July and against the background of the Legal Service's contribution it is however necessary to revise the document:

6.1. The recitals should clarify that it is a measure to be incorporated in the form of an amendment of the Europol Convention, for implementation of Article 30 (2) of the Treaty on European Union and Conclusion No 43 of Tampere, while the framework set out by Article 13 of the Convention on Mutual Assistance in Criminal Matters is taken into account. They must therefore be revised.

6.2. The Recommendations should in particular be adapted to the tasks set out in Article 3 and to the requirements of Article 4 (national unit as the only liaison office between Europol and the authorities of Member States), to Article 10 (Provisions on work files for the purposes of analysis) as well as to Articles 9 and 13 (Notification to Member States) of the Europol Convention.

This could be done by inserting the words “through the national units“ after “Europol will provide support“ in para 2 of the operative part of the Recommendation.

The following indents should be based on the set of tasks referred to in Article 3 of the Europol Convention. They could be formulated and structured as follows:

- to facilitate the exchange of information between the Member States on the basis of their national law (Article 3 (1) No 1 in conjunction with Article 5);

- to obtain, collate and analyse information and intelligence (Article 3 (1) No 3 in conjunction with Article 10 (3) – (5));
  - if no relevant work file for the purposes of analysis is available, by providing advice on the preparation of such a work file for the subject matter of the joint investigative team;
• if a relevant work file for the purposes of analysis is already available, by communicating information and analysis results in accordance with Article 10 (8) of the Europol Convention;

- to notify the competent authorities of the Member States without delay of information concerning them and of any connections identified between criminal offences and to aid investigations in the Member States by forwarding all relevant information (Article 3 (1) points 3 and 4 in conjunction with Articles 9 and 13);

- to develop specialist knowledge of the investigative procedures of the competent authorities in the Member States and to provide advice on investigations (Article 3 (2) point 1)

- to provide strategic intelligence to assist with and promote the efficient and effective use of the resources available at national level for operational activities (Article 2 (2) point 2);

- to assist the Member States with advice on technical and forensic police methods and investigative procedures (Article 3 (3) point 4).

7. The German delegation believes that further support measures by Europol officials should be taken into consideration for the implementation of Article 30 (2) point a of the EU Treaty as well as Conclusion No 43 of Tampere, which, according to the Contribution of the Legal Service, would require amending the Europol Convention under the procedure provided for in this respect.

Such support measures could for instance consist in the participation of Europol officials in joint investigative teams, with all powers for these officials allowed by Article 13 of the Convention on Mutual Assistance in Criminal Matters and by the arrangements provided for in Article 13 (12) of this Convention.
Certain restrictions would be conceivable in this respect, eg restricting the powers of Europol officials to the provision of expert advice or of technical support. In this context, the consequences arising from such an amendment of the Europol Convention, which might also affect other standards of the Convention and the implementing rules, and even other envisaged amendments of the Convention, should also be borne in mind.