(Joint actions adopted by the Council of the European Union)

JOINT ACTION

of 10 March 1995

adopted by the Council on the basis of Article K.3 of the Treaty on European Union concerning the Europol Drugs Unit

(95/73/JHA)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to Article K.3 (2) (b) of the Treaty on European Union,

Having regard to the initiative of the Federal Republic of Germany,

Whereas the Member States consider as a matter of common interest the creation of the Europol Drugs Unit in accordance with Article K.1 (9) of the Treaty;

Whereas, at its meeting held in Luxembourg on 28 and 29 June 1991, the European Council noted proposals for the setting up of a European Police Office (Europol), agreed on the objectives defined in these proposals and recommended that these proposals be examined further;

Whereas, in the report they submitted to the European Council on 4 December 1991, the Ministers unanimously agreed on the setting up of Europol, beginning with a drugs intelligence unit which would then be developed in the near future;

Whereas, at its meeting held in Maastricht on 9 and 10 December 1991, the European Council agreed on the creation of Europol, the initial function of which would be to organize the exchange of information on narcotic drugs between the Member States, and instructed the Ministers to take, at an early date, such measures as were needed for this purpose;

Whereas, at its meeting held in Lisbon on 26 and 27 June 1992, the European Council recommended that a Convention on the establishment of Europol be drawn up;

Whereas Member States need to cooperate in an appropriate structure before the entry into force of such a Convention;

Whereas, in view of the urgent need to deal with the problems posed by international illicit drug trafficking, associated money laundering and organized crime, the Ministers recommended at their special meeting on 18 September 1992 that Europol's first phase, the Europol Drugs Unit, be in place by 1 January 1993 at the latest;

Whereas the Representatives of the Governments of the Member States, meeting at Head of State and Government level, decided on the location of the seats of certain bodies and departments of the European Communities and of Europol, according to which Europol and the Europol Drugs Unit were to have their seat in The Hague;

Whereas the Member States already have a provisional framework for cooperation in the form of the Europol Drugs Unit, established by ministerial agreement of 2 June 1993 concerning the setting up of the said Unit which has been operational since January 1994;

Whereas, at its meeting held on 9 and 10 December 1994 in Essen, the European Council decided to extend the mandate of the Europol Drugs Unit to the fight against illegal trade in radioactive and nuclear materials, crimes involving clandestine immigration networks, illegal vehicle trafficking and associated money-laundering operations;

Whereas, in the conclusions of the European Council of 9 and 10 December 1994, it was decided that the Convention on the establishment of Europol should be concluded at the latest by the European Council in Cannes and whereas there is the will to take all the steps necessary to achieve this aim,

HAS DECIDED AS FOLLOWS:

Article 1

The following rules shall apply to the Europol Drugs Unit initially set up by the ministerial agreement of 2 June 1993, hereinafter referred to as 'the Unit'.

Article 2

Objectives and scope

1. Each Member State shall send one or more liaison officers to The Hague in order to constitute, with the liaison officers of the other Member States, a team which will cooperate within the Unit.

2. The Unit shall act as a non-operational team for the exchange and analysis of information and intelligence, as soon as they affect two or more Member States, in relation to:

(a) illicit drug trafficking;

(b) illicit trafficking in radioactive and nuclear substances;

(c) crimes involving clandestine immigration networks;

(d) illicit vehicle trafficking;

together with the criminal organizations involved and associated money-laundering activities.

3. The objective of the Unit is to help the police and other competent agencies within and between Member States to combat the criminal activities referred to in paragraph 2 more effectively.

For this purpose, members of the Unit, acting in accordance with their national laws, other relevant legal rules and any instructions given by their respective Member States, shall perform the following tasks:

(a) exchange, between Member States, of information (including personal information) in furtherance of specific criminal investigations concerning the criminal activities referred to in paragraph 2;

(b) preparation of general situation reports and analyses of criminal activities on the basis of non-personal information supplied by Member States or from other sources.

The activities of the Unit shall be without prejudice to other forms of bilateral or multilateral cooperation in combating the criminal activities referred to in paragraph 2, or to the competences of the European Communities.

Article 3

Data processing

1. With regard to the criminal activities referred to in Article 2 (2), the liaison officers shall communicate, in accordance with their national laws, other relevant legal rules and any instructions given by their respective Member States, information in furtherance of specific criminal investigations concerning the criminal activities referred to in Article 2 (2), the development of intelligence as well as strategic analysis.

In order to fulfil their tasks, the liaison officers shall have access to all criminal information and intelligence of their respective Member States.

The protection of all information from unauthorized access and against destruction, including ensuring the physical protection of data-processing systems and links, must be ensured.

2. Requests for information made to the Unit by the police or any other competent service shall be channelled through one national central authority. The latter shall also be responsible for the receipt and the passing on of any replies supplied by the Unit.

Article 4

Data protection

1. Personal information shall be communicated on the basis of exchanges between the liaison officers, each of them acting in accordance with his national laws, with any other relevant legal rules and with instructions given by his Member State concerning the processing of personal information, in compliance with all the conditions imposed by the delivering State in respect of the use of such information.

Any exchange of information between the requesting and the delivering State shall take place solely on a bilateral basis via the liaison officers of these States.

Should the delivering State, in the course of dealing with a request, discover any information in connection with a criminal activity referred to in Article 2 (2) which is of interest to another Member State, this information may be made available to that Member State via the liaison officers of the States involved in accordance with their respective national legislation.

2. The liaison officers shall not transmit any personal information to States other than Member States or to any international organization.

To the extent required by their national legislation on data protection, the liaison officers shall keep a record, exclusively for the purposes of data protection, of the personal information they have transmitted in accordance with paragraph 1. Furthermore, no personal information shall be stored centrally by the Unit, whether automatically or otherwise.

3. Member States shall recommend to their data-protection authorities that they ensure that the activities of their liaison officers comply with their national legislation on the protection of personal data and that the Unit's common database, if any, contains only non-personal data.

In order to enable these recommendations to be met, Member States shall undertake to see that their liaison officers cooperate fully with their competent national data-protection authorities.

Article 5

Staffing

1. The Unit shall be headed by a Coordinator. In addition to the Coordinator, the management team shall consist of two Assistant Coordinators and of two other members who have a direct hierarchical link to the Coordinator and whose scope of activities is specifically defined.

The Coordinator, the two Assistant Coordinators and the other two members of the management team shall be appointed by the Council in accordance with the procedures provided for in Title VI of the Treaty.

The management team shall be responsible for the day-to-day operation of the Unit. The Member States shall instruct their liaison officers to follow the instructions of the Coordinator, in accordance with their national legislation, any other relevant legal rules and the instructions they give them.

2. Apart from the liaison officers sent directly by Member States, other staff shall be posted to the Unit in such numbers as may be agreed by the Council in accordance with the procedures provided for in Title VI of the Treaty. The Coordinator of the Unit shall be involved in the appointment of such staff.

Article 6

Responsibility

Without prejudice to the responsibility of each Member State for controlling its national liaison officers, the Council shall exercise general oversight over the activities of the Unit. For this purpose, the Coordinator shall submit a six-monthly written report on his management and the activities of the Unit. The Coordinator shall also provide any other report or information for which the Council may ask.

Article 7

Finance

The Member States shall bear the cost of sending their liaison officers as well as of the necessary equipment for the Unit to the Unit. Other costs of establishing and maintaining the Unit, initially met by the host country, shall be defrayed jointly by the Member States. To this end, each Member State's annual contribution shall be determined, in compliance with its budget rules and procedures, on the basis of its gross national product (GNP), according to the scale used for determining the GNP element of the own resources financing the general budget of the European Communities.

Each year the GNP of each Member State for the previous year shall be the reference basis used.

Article 8

Entry into force

This Joint Action shall enter into force on the day of its publication in the Official Journal. It shall replace the Ministerial Agreement of 2 June 1993 on the establishment of the Europol Drugs Unit.

Done at Brussels, 10 March 1995.

For the Council
The President
P. MÉHAIGNERIE