



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 18 January 2005**

**5448/05**

**LIMITE**

**COPEN 10**

**COVER NOTE**

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from:	Secretary-General of the European Commission, signed by Ms Patricia BUGNOT, Director
date of receipt:	7 January 2005
to:	Mr Javier SOLANA, Secretary-General/High Representative
Subject:	Report from the Commission on national measures taken to comply with the Council Framework Decision of 13 June 2002 on Joint Investigation Teams

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Delegations will find attached Commission document COM(2004) 858 final.

Encl.: COM(2004) 858 final



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 7.1.2005  
COM(2004) 858 final

**REPORT FROM THE COMMISSION**

**on national measures taken to comply with the Council Framework Decision  
of 13 June 2002 on Joint Investigation Teams**

{SEC(2004) 1725}

## 1. INTRODUCTION

The growth of cross-border crime and the spread of terrorism prompted Member States to adopt a legislative instrument providing for harmonised legislation which establishes clear rules on the setting up and operating of joint investigation teams. In practice, informal teams were already operating, but there was no common legislation in place to govern their action.

A first step in this direction was the 2000 Convention on Mutual Assistance in Criminal Matters<sup>1</sup> (hereinafter referred to as “the 2000 Convention”), which deals with joint investigation teams (Article 13) and also provides for many other instruments to combat cross-border crime, such as spontaneous exchange of information, covert investigation, controlled deliveries, etc.

Owing to the delay in ratifying the 2000 Convention, the Council adopted the Framework Decision on joint investigation teams<sup>2</sup> (hereinafter referred to as “the Framework Decision”) on 13 June 2002, to provide a more timely means of enhancing the operation of joint investigation teams.

The Framework Decision will cease to have effect when the Convention on Mutual Assistance in Criminal Matters has entered into force in all Member States (Article 5).

Under Article 4 of the Framework Decision, Member States have to take the necessary measures to comply with the provisions of the Framework Decision by 1 January 2003.

On 28 November 2002, the Council adopted a Protocol<sup>3</sup> amending the Europol Convention in order to enable Europol officials to take part in joint investigation teams.

On 8 May 2003, the Council adopted a Recommendation on a Model Agreement for setting up a joint investigation team<sup>4</sup>.

Following the terrorist attacks of 11 March 2004 on Madrid, in its Declaration of 25 March 2004<sup>5</sup>, the European Council urged Member States to adopt any measures that remain necessary to fully implement the Framework Decision by June 2004 and to ensure that Europol and Eurojust representatives are associated with the work of joint investigation teams as far as possible.

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<sup>1</sup> Council Act of 29 May 2000 establishing in accordance with Article 34 of the Treaty on European Union the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union, OJ C 197 of 12.7.2000, p. 1.

<sup>2</sup> Council Framework Decision of 13 June 2002 on Joint investigation teams, OJ L 162 of 20.6.2002, p. 1.

<sup>3</sup> Council Act of 28 November 2002 drawing up a Protocol amending the Convention on the establishment of a European Police Office (Europol Convention) and the Protocol on the privileges and immunities of Europol, the members of its organs, the deputy directors and the employees of Europol, OJ C 312 of 16.12.2002, p. 1.

<sup>4</sup> Council Recommendation of 8 May 2003 on a model agreement for setting up a joint investigation team (JIT), OJ C 121 of 23.5.2003, p. 1.

<sup>5</sup> Council document 7906/04 JAI, 100.

## **2. PURPOSE OF THE REPORT AND METHOD OF EVALUATION**

Framework decisions are binding upon the Member States as to the result to be achieved, but leave to national authorities the choice of form and methods. They do not have direct effect.

As the Commission has no authority under the Third Pillar to initiate an infringement procedure against a Member State, the nature and purpose of this report is limited to a factual evaluation of the implementation measures taken.

The Commission reminded Member States of their obligation by means of a letter sent on 5 February 2003. At that point in time only one Member State (United Kingdom) had already forwarded information on implementation. By 31 December 2003, nine Member States (Germany, Spain, Italy, Luxembourg, Austria, Portugal, Finland, Sweden and United Kingdom) had provided the Commission with information on the implementation. In April 2004, one Member State (France) forwarded information on implementation and one Member State (Austria) informed the Commission that new legislation concerning joint investigation teams was due to enter into force. In May 2004 the Commission again contacted the Member States which had not provided any information (Belgium, Denmark, Greece, Ireland and the Netherlands) and obtained answers from three of them (Belgium, Greece and the Netherlands).

In the light of enlargement, on 13 April 2004 the Commission contacted the acceding Member States, asking for information on the implementation of the Framework Decision. Six of them have answered (Cyprus, Hungary, Latvia, Lithuania, Malta and Slovakia).

Although the deadline for submitting the report to the Council was 1 July 2004, in order to assess the implementation in as many Member States as possible, further information provided by 15 August 2004 has been taken into account.

Only three Member States (Denmark, Latvia and Finland) had adopted the transposing legislation by the deadline set in Article 4 of the Framework Decision and only one (United Kingdom) -which also adopted part of the transposing measures before the deadline- forwarded the relevant information to the Commission on time.

In total, 14 Member States forwarded the relevant legislation to the Commission (Denmark, Germany, Spain, France, Latvia, Lithuania, Hungary, Malta, the Netherlands, Austria, Portugal, Finland, Sweden and United Kingdom). No information was received from five Member States (Estonia, Ireland, Poland, Czech Republic, Slovenia), while four Member States forwarded the text of a bill (Belgium, Italy, Cyprus and Slovakia) and two Member States informed the Commission that a draft was in preparation (Greece and Luxembourg).

The quality of the national information received by the Commission inevitably influences the value and the punctuality of this report. The Commission has encountered many difficulties in gathering the relevant information. Furthermore, the domestic legislation was partial and made reference to other provisions not supplied to the Commission. The evaluation of the information received highlighted the fact

that, even where legislation was not indispensable, it might nevertheless be useful to put in place guidelines or circulars clarifying certain essential issues.

Difficulties in the assessment have also arisen from the fact that the Framework Decision was created by taking over Articles 13, 15 and 16 directly from the 2000 Convention. Provisions concerning joint investigation teams were agreed in the 2000 Convention as part of a complex system involving several instruments concerning co-operation in combating cross-border crime. The Framework Decision on joint investigation teams does not reproduce the whole of the 2000 Convention and this could lead, in this transition period before the entry into force of the 2000 Convention, to a lack of clarity concerning aspects such as the authority competent to set up the teams or the fact that certain investigative activities (for example covert investigation or controlled deliveries which may usefully be performed by the team) are not governed by the Framework Decision.

In this light, the fact that the 2000 Convention has now been ratified by eight Member States (Denmark, Estonia, Spain, Latvia, Lithuania, the Netherlands, Portugal, Finland) must be taken into account. Certain Member States which ratified the 2000 Convention also adopted specific legislation enacting the Framework Decision (Spain, Latvia, Portugal, Finland), whereas others implemented the Framework Decision by means of the law ratifying the 2000 Convention (Denmark and the Netherlands). One Member State (Lithuania) forwarded only the text of specific domestic legislation without annexing the ratifying law, and one (Estonia) did not give any information on implementation, despite having ratified the 2000 Convention.

### **3. CONCLUSIONS**

In order to assess the implementation of the Framework Decision, it should be borne in mind that Member States are obliged to adopt new legislation insofar as it is needed to transpose the Framework Decision. Therefore, if the judicial system, considered as a whole, already contains legally binding rules that assure the full application of the Framework Decision, no further legislation is needed. Moreover, it is not necessary that implementing legislation has the same wording as the Framework Decision as long as the final result guarantees the full application of the rules governed by the Framework Decision and creates a legal situation that is sufficiently clear and precise.

In general terms, the implementation of the Framework Decision has, in most Member States, required the adoption of new legislation or at least the amendment of certain internal provisions.

Some Member States transposed the Framework Decision into domestic laws having more or less the same content as the Framework Decision (Spain, Portugal) while others amended existing provisions or adopted legislation providing for new rules (Denmark, France, Latvia, Hungary, Austria, Finland, Sweden).

One Member State (United Kingdom) stated that only certain provisions needed to be enacted whereas the others have been transposed by means of a Circular. As the

circular is not legally binding, the relevant provisions have been considered as not complying with the Framework Decision.

Three Member States (Germany, Lithuania and Malta) took the view that no specific legislation was needed to implement the Framework Decision

In one Member State (the Netherlands) legislation in place allows the setting up of joint investigation teams “insofar as provided for by treaty or convention”. As the Framework Decision is not a treaty nor a convention, the relevant provisions are not compliant with the Framework Decision.

The conclusions which follow assess the implementation of each provision of the Framework Decision one by one. For further clarification and a detailed examination of national legislation see Annex 1.

With regard to **Article 1(1)**, which is the most crucial part of the Framework Decision, it is sufficient that the general legal context allows the setting up of joint investigation teams as working groups operating in a transnational dimension for limited periods and with specific purposes. Almost every Member State with legislation in place has implemented this provision (Spain, France, Latvia, Lithuania, Hungary, Austria, Portugal, Finland, Sweden). In several Member States the legislation in force makes reference to an agreement (Spain, Latvia, Hungary, Austria, Portugal, Finland and Sweden), which in some cases is indicated as the Model Agreement adopted by the Council (Austria) whereas in others the term refers to general contact between competent authorities (France, Lithuania).

Regarding the proposal for the composition of the team contained in **Article 1(2)**, it must be noted that legislation in place, whenever it refers to an agreement or a different understanding between competent authorities, even if it does not make reference to the Model Agreement adopted by the Council, implicitly involves the composition of the team.

With regard to **Article 1(3)**, concerning the leadership of the team, the applicable law and the organisational arrangements, it is sufficient that each Member State provides for rules to be applied within its borders without specifying what rules are applicable in the other Member States. Nevertheless, it has been fully implemented by only two Member States (Spain and Austria). Four Member States have transposed only certain provisions such as general rules on the “supervisory powers” accorded to the team leader or on the applicable law (France), or such as provisions concerning the leader of the team and the applicable law without any reference to the organisational arrangements (Latvia, Hungary and Finland). The legislation adopted by the other Member States (Denmark, Germany, Lithuania, Malta, the Netherlands, Portugal, Sweden, United Kingdom) does not deal with these issues.

Concerning **Article 1(4)** (dealing with the definition of “seconded member”) it must be noted that, even if no provision expressly provides for a definition of “seconded member”, when implementing legislation refers to people seconded to the team, it is clear from the general context, that it refers to members of the joint investigation team from Member States other than the one where the team operates.

One of the most significant aspects of the Framework Decision deals with the powers accorded to seconded members (**Article 1(5) and (6)**). The implementing legislation differs considerably from one State to another. While in some Member States the activities with which seconded members may be entrusted are listed and specifically indicated (France, Malta and Finland), in others the provision is very general (Lithuania) or makes reference to the agreement required to set up the team (Spain), to other types of approval by the competent authority (Germany), or to national law (Austria) and in certain others it is up to the team leader to decide with which powers seconded members may be entrusted (Latvia and Portugal).

**Article 1(7)** deals with the case in which the team requires investigative measures to be taken in one of the Member States setting up the team. The aim of this provision is to prevent joint investigation teams from needing letters rogatory. Only three Member States (Spain, Finland, Sweden) have complied with this provision. One Member State (United Kingdom) has restricted investigative measures to search warrant and production orders and most of the national enacting legislation does not deal with it (Denmark, Germany, France, Lithuania, Hungary, Malta, the Netherlands, Austria, Portugal). One Member State (Latvia) adopted unclear provisions which seem not to comply with Article 1(7).

**Article 1(8)** concerning assistance needed from a Member State other than those participating in the team, or from a third State, has been fully transposed by two Member States (Spain and Portugal) and one Member State (Latvia) adopted unclear provisions. According to the information received, the other Member States have no relevant legislation in place regarding Article 1 (8).

Provisions on the providing of information (**Article 1(9)**) have been directly implemented by three Member States (Latvia, Portugal and Sweden). Nevertheless, in several cases the possibility for seconded members to provide the team with information available in the seconding Member State may be deduced from a general interpretation of the legislation (Spain, Hungary, Austria, Finland). No relevant provision could be found in the other Member States' legislation.

Concerning the use of the information gathered (**Article 1(10)**) it may be observed that three Member States have fully complied with this provision (Spain, Portugal, Sweden) and two have implemented it partially (Austria and Finland). One Member State adopted provisions which are not in line with the Framework Decision (Latvia).

With regard to **Article 1(11)** (stating that the Framework Decision shall be without prejudice to any other existing provisions or arrangements on the setting up or operation of joint investigation teams), no Member State forwarded specific legislation. Nevertheless, as far as no conflicting provision arises from the implementing legislations, it must be considered that every Member State is compliant with Article 1(11).

The option of permitting persons other than representatives of the Member States to take part in the team (**Article 1(12)**) has been provided for by six Member States only (Spain, Latvia, Hungary, Austria, Portugal, Finland). In one Member State legislation in place makes reference to "cases provided for in international treaty" (Lithuania). The other Member States have not transposed this provision.

With regard to **Article 2** (criminal liability) implementing provisions have been adopted by six Member States (Denmark, Spain, Lithuania, Malta, Austria, United Kingdom); one Member State has implemented it partially (Germany). The others have not adopted any transposing measures.

**Article 3** (civil liability) has been fully transposed in three Member States (Spain, Austria, Portugal) and partially transposed in four Member States (Denmark, Lithuania, Finland, Sweden, United Kingdom). No provision has been adopted in other Member States.

In conclusion, only one Member State adopted transposing measures which are fully compliant with the Framework Decision (Spain).

Nevertheless, it is essential to underline that whenever legislation in place provides for joint investigation teams to be set up through an agreement (see comments on Article 1 (1)), this should ensure a satisfactory implementation.

The Commission will, in a supplementary report, take into account further information supplied and update, where necessary, the information on national legislation. In the meantime, the Commission invites all Member States to ensure the rapid and complete transposition of the Framework Decision on Joint investigation teams and to inform it of any measures taken.

Two staff documents in the form of Commission staff working papers are annexed to this report: in the first, in accordance with the information collected by the Commission, legislation adopted or due to be adopted in each Member State is evaluated with reference to each provision of the Framework Decision; the second contains a table detailing the transposition into national provisions of each article of the Framework Decision.