



Number 20 of 2004

**CRIMINAL JUSTICE (JOINT INVESTIGATION TEAMS)
ACT 2004**

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[No. 20.] *Criminal Justice (Joint Investigation Teams) Act 2004.* [2004.]

SCHEDULE

FRAMEWORK DECISION OF 13 JUNE 2002 OF THE COUNCIL OF THE
EUROPEAN UNION ON JOINT INVESTIGATION TEAMS

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Number 20 of 2004

**CRIMINAL JUSTICE (JOINT INVESTIGATION TEAMS)
ACT 2004**

AN ACT TO PROVIDE FOR THE IMPLEMENTATION OF THE FRAMEWORK DECISION OF 13 JUNE 2002 OF THE COUNCIL OF THE EUROPEAN UNION ON JOINT INVESTIGATION TEAMS, FOR THAT PURPOSE TO AMEND THE CRIMINAL JUSTICE ACT 1994, THE GARDA SÍOCHÁNA ACT 1989 AND REPEAL SECTION 5 OF THE EUROPOL ACT 1997, AND TO PROVIDE FOR RELATED MATTERS. [30th June, 2004]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

1.—(1) In this Act, unless the context otherwise requires— Interpretation.

“Act of 1994” means Criminal Justice Act 1994;

“another Member State” means a Member State other than the State;

“the Commissioner” means the Commissioner of the Garda Síochána;

“competent authority” shall be construed in accordance with *section 2*;

“the Council Framework Decision” means the Framework Decision of 13 June 2002 of the Council of the European Union on joint investigation teams¹, the text of which is for convenience of reference set out—

(a) in *Part 1* of the *Schedule* to this Act, in the case of the Irish language text, and

(b) in *Part 2* of that *Schedule*, in the case of the English language text;

“European Communities” has the meaning it has in the European Communities Act 1972;

¹ OJ No. L 162, 20.06.2002, p.1.

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S.1 “joint investigation team” means a joint investigation team established under *section 3* or *4*;

“member”, in relation to a joint investigation team or a part of such a team, means a person who is assigned or appointed under *section 6* to be a member of the team;

“Member State” means Member State of the European Communities;

“Minister” means Minister for Justice, Equality and Law Reform;

“participants” has the meaning assigned to it by *section 9*;

“seconded member”, in relation to a joint investigation team or a part of such a team, means—

(a) if and when the team or the part is operating in the State, a member of the team or the part aforesaid appointed by the competent authority of another Member State that established the team, and

(b) if and when the team or the part is operating in another Member State, a member of the team or the part aforesaid assigned or appointed under *section 6*;

“team leader”, in relation to a joint investigation team or a part of such a team, means—

(a) if and when the team or the part is operating in the State, the member of the team or the part aforesaid designated by the Commissioner under *section 7(1)(d)* to be the team leader, and

(b) if and when the team or the part is operating in another Member State, the member of the team or the part aforesaid designated by the competent authority of that Member State to be the team leader.

(2) In this Act—

(a) a reference to a section is a reference to a section of this Act unless it is indicated that reference to some other enactment is intended,

(b) a reference to a subsection or paragraph is a reference to the subsection or paragraph of the provision in which the reference occurs unless it is indicated that reference to some other provision is intended, and

(c) a reference to any enactment shall be construed as a reference to that enactment as amended, adapted or extended by or under any other enactment including this Act.

Competent authorities.

2.—(1) Subject to *subsection (2)*, the competent authority of the State for the purposes of the Council Framework Decision and this Act (in this Act referred to as “the Competent Authority”) is the Commissioner.

(2) Where the competent authority of another Member State requires a request to it under *section 3(1)* to be made, or a request

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from it under *section 4(1)* to be received, by a judicial authority, the Minister shall be the Competent Authority in relation to the request. S.2

(3) In this Act “competent authority”, in relation to another Member State, means the authority designated by that Member State to be the competent authority of that Member State for the purposes of the Council Framework Decision.

3.—(1) Where the Competent Authority is satisfied that—

(a) either—

- (i) an offence has been committed, or there are reasonable grounds for suspecting that an offence has been committed, in the State and the investigation of the offence or suspected offence has links with another Member State or States, or
- (ii) conduct which would constitute an offence if it occurred in the State has occurred, or there are reasonable grounds for suspecting that such conduct has occurred, partly in the State and partly in another Member State or States,

and

(b) there are reasonable grounds for believing that it is in the public interest, having regard to the benefit likely to accrue to the investigation of the offence or suspected offence concerned or into the conduct concerned, to establish a joint investigation team with that other Member State or those other Member States because—

- (i) part of the investigation is being, or it is anticipated that it will be, conducted in that other Member State or those other Member States, or
- (ii) the investigation requires coordinated and concerted action by the Member States (including the State) concerned,

the Competent Authority may request the competent authority or authorities of that other Member State or those other Member States to establish a joint investigation team to investigate the offence, suspected offence or conduct concerned.

(2) A request under *subsection (1)* shall specify the following:

- (a) the competent authority making the request,
- (b) the purpose of the request,
- (c) the conduct to be investigated,
- (d) the identity and nationality (if known) of the person or persons whose conduct is to be investigated,
- (e) proposals in respect of the membership of a joint investigation team, and
- (f) the period for which a joint investigation team is required.

Request to other Member State or States to establish joint investigation team.

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(3) The Competent Authority shall furnish to the other competent authority or authorities concerned such other information (if any) as is specified to the Competent Authority and is reasonably required by that authority or those authorities to decide whether or not to agree to establish a joint investigation team.

(4) Where any of the competent authorities concerned accedes to a request under *subsection (1)*, the Competent Authority may, subject to this Act, agree with that authority and any other competent authority concerned to establish a joint investigation team to investigate the offence, suspected offence or conduct concerned.

(5) The Competent Authority and the competent authority or authorities concerned may, pursuant to an agreement under *subsection (4)*, establish a joint investigation team.

Request from other Member State or States to establish joint investigation team.

4.—(1) Where the Competent Authority receives a request specifying the matters mentioned in *section 3(2)* from one or more competent authorities of other Member States to establish a joint investigation team, the Competent Authority shall consider the request.

(2) The Competent Authority may seek from the competent authority or authorities concerned such other information (if any) as is specified to that authority or those authorities and is reasonably required by the Competent Authority to decide whether or not to agree to establish a joint investigation team.

(3) The Competent Authority may, subject to this Act, agree with the competent authority or authorities concerned to establish a joint investigation team to investigate certain conduct if the Competent Authority is satisfied that—

(a) either—

(i) the conduct which would constitute an offence if it occurred in the State has occurred, or there are reasonable grounds for suspecting that such conduct has occurred, partly in the State and partly in another Member State or States, or

(ii) the conduct which would constitute an offence if it occurred in the State has occurred, or there are reasonable grounds for suspecting that such conduct has occurred, in another Member State or States and the investigation of it has links with the State,

and

(b) there are reasonable grounds for believing that it is in the public interest, having regard to the benefit likely to accrue to the investigation into the conduct concerned, to agree to the establishment of a joint investigation team with the other Member State or States concerned because—

(i) part of the investigation is being, or it is anticipated that it will be, conducted in the State, or

(ii) the investigation requires coordinated and concerted action by the Member States (including the State) concerned.

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(4) The Competent Authority and the competent authority or S.4 authorities concerned may, pursuant to an agreement under *subsection (3)*, establish a joint investigation team.

5.—(1) A joint investigation team shall be established for specific purposes and a limited period which may be extended, if the circumstances so require, for such period or periods as may be agreed by the Competent Authority and the other competent authority or authorities concerned. Provisions relating to joint investigation teams.

(2) Subject to *subsection (1)*, a joint investigation team may operate in the State or in the other Member State or States concerned for so long as it is necessary to do so for the purpose of conducting the investigation concerned, and parts of it may operate in more than one of those Member States at the same time.

(3) Subject to this Act, the Competent Authority may, at any time after a joint investigation team has been established, agree with the competent authority or authorities concerned to amend the agreement establishing the team.

(4) The State may join a joint investigation team that has been established by Member States other than the State on such terms and conditions as the Competent Authority may, subject to this Act, agree with the competent authorities of those Member States if the Competent Authority is satisfied that—

(a) the conduct being investigated by the team is either—

- (i) conduct which would constitute an offence if it occurred in the State and it has occurred, or there are reasonable grounds for suspecting that such conduct has occurred, partly in the State and partly in another Member State or States, or
- (ii) conduct which would constitute an offence if it occurred in the State and it has occurred, or there are reasonable grounds for suspecting that such conduct has occurred, in another Member State or States and the investigation of it has links with the State,

and

(b) there are reasonable grounds for believing that it is in the public interest, having regard to the benefit likely to accrue to the investigation into the conduct concerned, to agree to the State joining the team because—

- (i) part of the investigation is being, or it is anticipated that it will be, conducted in the State, or
- (ii) the investigation requires coordinated and concerted action by the Member States (including the State) concerned.

(5) Where a joint investigation team has been established by more than one Member State including the State, another Member State may join the team on such terms and conditions as its competent

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authority may agree with the Competent Authority and the competent authority or authorities of the other Member State or States concerned.

(6) In relation to an agreement referred to in *subsection (4)* or *(5)*—

(a) a reference in this Act to the Member States that established a joint investigation team shall be construed as including a reference to the State or, as the case may be, to the Member State that joined the team under *subsection (5)*, and

(b) a reference in this Act to the competent authority or authorities of the Member State or States that established a joint investigation team shall be construed as including a reference to the Competent Authority or, as the case may be, the competent authority of the Member State that joined the team under *subsection (5)*.

(7) Notwithstanding *subsection (1)*, the Competent Authority may agree with the other competent authority or authorities concerned to terminate a joint investigation team when—

(a) the purposes for which the team was established have been achieved, or

(b) no further benefit is likely to accrue from the continued operation of the team.

Membership and terms and conditions of membership of joint investigation teams.

6.—(1) The Commissioner may assign such and so many members of the Garda Síochána as he or she considers appropriate to be members of a joint investigation team.

(2) The Minister may, after consultation with the Commissioner, the Minister for Finance and such other Ministers of the Government (if any) as the Minister considers appropriate and, in relation to officers of the Revenue Commissioners, with the Revenue Commissioners, appoint any of the following to be members of a joint investigation team:

(a) one or more officers of customs and excise,

(b) one or more other officers of the Revenue Commissioners or officers of the Minister or of any other Minister of the Government, or

(c) one or more other persons who, in the opinion of the Minister, have experience or expertise relevant to the investigation concerned.

(3) Members of a joint investigation team assigned under *subsection (1)*, or appointed under *paragraph (a)* or *(b)* of *subsection (2)*, shall—

(a) subject to *subsection (4)*, be paid such remuneration, and allowances for expenses (if any) incurred by them, as they would have been paid if they continued to be members of the Garda Síochána, officers of customs and excise or other officers of the Revenue Commissioners, officers of the Minister or of any other Minister of the Government,

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as the case may be, and such remuneration and allowances for expenses (if any) shall continue to be paid to them in the same manner as if they had not been so assigned or appointed, and S.6

(b) subject to this Act, continue to be subject to the same terms and conditions of employment as they were subject to immediately before they were so assigned or appointed.

(4) Members of a joint investigation team assigned under *subsection (1)*, or appointed under *paragraph (a) or (b) of subsection (2)*, who were paid certain allowances in respect of particular duties performed by them as members of the Garda Síochána, officers of customs and excise or other officers of the Revenue Commissioners, officers of the Minister or of any other Minister of the Government, as the case may be, before they were so assigned or appointed shall be paid those allowances during their membership of the team only if those duties are performed by them as members of the team.

(5) Members of a joint investigation team appointed under *subsection (2)(c)* shall—

(a) be paid such remuneration (if any), and allowances for expenses (if any) incurred by them, as the Minister may, with the consent of the Minister for Finance, determine, and

(b) subject to this Act, be subject to such other terms and conditions as the Minister may determine.

(6) (a) The Commissioner may remove a member of a joint investigation team assigned under *subsection (1)* from such membership.

(b) The Minister may, if so requested by the Commissioner, remove a member of a joint investigation team appointed under *subsection (2)* from such membership.

(7) Members of the Garda Síochána or officers of customs and excise who are members of a joint investigation team shall continue to be vested with and may exercise or perform the powers and duties of members of the Garda Síochána or officers of customs and excise, as the case may be—

(a) for the purposes of their functions as members, and, if it is so provided in the agreement to establish the team, for the purposes of their functions as seconded members, of the team, and

(b) notwithstanding their membership of the team, for purposes other than the purposes of this Act.

7.—(1) While a joint investigation team or a part of such a team is operating in the State— Operation of joint investigation teams.

(a) it or the part aforesaid shall perform its functions in accordance with the law of the State,

(b) it or the part aforesaid shall operate under the control and general superintendence of the Commissioner,

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- (c) the Commissioner shall make the necessary organisational arrangements for it or the part aforesaid to operate in the State, and
 - (d) the Commissioner shall designate a member of it or the part aforesaid to be the team leader.
- (2) (a) The team leader of a joint investigation team or a part of such a team operating in the State shall, subject to this Act and the agreement to establish the team, manage its operations or the operations of the part aforesaid, as the case may be.
- (b) The members (other than the team leader), and seconded members, of a joint investigation team or a part of such a team operating in the State shall perform their functions as such members or seconded members, as the case may be, under the direction and control of the team leader.
- (3) Subject to this Act, a seconded member of a joint investigation team or a part of such a team operating in the State shall while the team or the part aforesaid is so operating be subject to the law of the State in the same manner as if he or she were a member of the team appointed under *section 6(2)(b)*.
- (4) A member of a joint investigation team appointed under *paragraph (b) or (c) of section 6(2)*, or a seconded member, of a joint investigation team or a part of such a team operating in the State may not take investigative measures.
- (5) A member of a joint investigation team appointed under *section 6(2)*, or a seconded member, of a joint investigation team or a part of such a team operating in the State may, if permitted by law, be present when investigative measures are being taken unless the team leader decides that the member or seconded member or either of them should not be so present for any reason including the following:
- (a) for operational reasons, or
 - (b) by reason of the nature of the offence, it is not appropriate for the member or seconded member to be so present.
- (6) Without prejudice to Part VII of the Act of 1994, evidence obtained during the course of criminal investigations conducted by a joint investigation team or a part of such a team operating in the State shall remain in the possession of the Garda Síochána or, if not already in their possession, be taken into their possession.
- (7) Where a joint investigation team or a part of such a team operating in the State requires assistance in obtaining evidence in another Member State that established the team and a seconded member of the team or the part aforesaid appointed by the competent authority of that Member State makes a request to the relevant authority in that Member State for such assistance, any evidence received from that Member State pursuant to such a request shall be deemed to have been obtained by virtue of a letter of request issued under section 52 of the Act of 1994 and, for that purpose, the relevant authority in that Member State, other than a court or tribunal exercising jurisdiction in that Member State, shall be deemed to be an authority to which subsection (3)(b) of that section applies.

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(8) The Minister may receive a request for assistance in obtaining evidence in the State under section 51 of the Act of 1994 from a member of a joint investigation team assigned under *section 6(1)*, who is performing functions as a seconded member of the team or a part of it in another Member State in which the team or the part is operating and, for that purpose, the member of the team shall be deemed to be an authority to which subsection (1)(b) of the said section 51 applies. S.7

(9) The Minister may receive a request for a search warrant authorising entry, search and seizure in relation to any place in the State under section 55(4) of the Act of 1994 from a member of a joint investigation team assigned under *section 6(1)*, who is performing functions as a seconded member of the team or a part of it in another Member State in which the team or the part is operating and, for that purpose, the member of the team shall be deemed to be an authority to which paragraph (b) of the said section 55(4) applies.

(10) While a joint investigation team or a part of such a team is operating in another Member State, the members of the team or the part aforesaid shall perform their functions as seconded members of the team or the part aforesaid in accordance with the agreement to establish the team.

(11) Where a joint investigation team or a part of such a team is operating in another Member State, a member of the team may, in accordance with the law of the State, furnish information that is available in the State to the team or the part aforesaid for the purposes of the criminal investigations being conducted by it.

(12) In this section “evidence” includes documents and other articles.

8.—(1) An agreement under *section 3(4)* or *4(3)* to establish a joint investigation team shall be in writing and shall specify the following: Agreements to establish joint investigation teams.

- (a) the parties to the agreement;
- (b) the purposes for which the team is established;
- (c) the identity and nationality (if known) of the person or persons whose conduct is to be investigated;
- (d) the membership of the team, including the identity (if known) of the member of it who is to be the team leader in each of the Member States (including the State) establishing the team and in which it or a part of it is to operate;
- (e) the period for which the team is to operate;
- (f) the financial arrangements for the team, including arrangements for the payment to its members of remuneration and allowances for expenses (if any) incurred by them and the payment of other expenses that may be incurred by it in the performance of its functions;
- (g) the participants (if any) in the team and whether *section 7(5)* is to apply to such participants; and

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(h) such other terms and conditions (if any) as are agreed by the Competent Authority and the other competent authority or authorities concerned.

(2) If the period for which a joint investigation team is to operate is extended under *section 5(1)*, the agreement under *subsection (1)* to establish the team shall be amended accordingly.

(3) If the Competent Authority agrees under *section 5(3)* with the other competent authority or authorities concerned to amend the agreement establishing a joint investigation team, the agreement under *subsection (1)* to establish the team shall be amended accordingly.

(4) If the State pursuant to an agreement under *subsection (4)* of *section 5* joins a joint investigation team, the agreement to establish the team concerned, as amended by the agreement under that subsection, shall insofar as is reasonably practicable be in accordance with *subsection (1)*.

(5) If another Member State pursuant to an agreement under *section 5(5)* joins a joint investigation team, the agreement under *subsection (1)* to establish the team concerned shall be amended to take account of that agreement under *section 5(5)*.

Participants in joint investigation teams.

9.—(1) The Competent Authority may agree with the other competent authority or authorities concerned to permit any of the following persons (in this Act referred to as “participants”) to participate, on such terms and conditions as may be agreed with the body or authority designating those persons, in the activities of a joint investigation team:

- (a) one or more officers designated by Europol,
- (b) one or more officers designated by a body, such as Eurojust, established under Title VI of the Treaty on European Union,
- (c) one or more officers designated by the European Commission or other institution of the European Communities, or
- (d) one or more officers designated by an authority of a country or territory other than a Member State or a part of such a State, and the Minister may designate such a country or territory by order.

(2) Participants in a joint investigation team shall provide support or advice or both to the team.

(3) *Subsections (2)(b), (3) and (4) of section 7, sections 11 and 12 and subsections (3) and (4) of section 13* shall apply to participants in a joint investigation team in the same manner as they apply to seconded members of the team with the following modifications, namely—

- (a) in *section 11(1)*, the reference to the competent authorities of the Member States (including the State) that established the team shall be construed as a reference to those competent authorities and the bodies or authorities that designated officers to be participants in the team,

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(b) in section 12(a), the reference to members of a police force of another Member State shall be construed as a reference to members of any police force, and

(c) in section 13(4)—

(i) in paragraph (a), the reference to the competent authority of the Member State that appointed the seconded members of the joint investigation team or the part of it concerned shall be construed as a reference to the body or authority that designated the officers concerned to be participants in the joint investigation team or the part of it concerned, and

(ii) in paragraph (b), the reference to another Member State or its competent authority shall be construed as a reference to the body or authority that designated the officers concerned to be participants in the team or the part of it concerned,

and any other necessary modifications.

(4) Section 7(5) shall, with any necessary modifications, apply to participants in a joint investigation team in the same manner as it applies to seconded members of the team if it is so provided in the agreement under section 8 to establish the team.

(5) The Minister may by order amend or revoke an order under this section including an order under this subsection.

(6) An order under this section shall, as soon as may be after it is made, be laid before each House of the Oireachtas.

10.—The Garda Síochána Act 1989 is amended—

Amendment of
Garda Síochána Act
1989.

(a) in section 3, by the substitution of the following subsection for subsection (2) (inserted by section 5(a) of the Europol Act 1997):

“(2) Notwithstanding anything contained in the Acts, a member of the Garda Síochána to whom this section for the time being applies shall be liable to serve outside the State—

(a) with a contingent of the Garda Síochána which is despatched for service with an International United Nations Force,

(b) as a liaison officer with Europol, or

(c) as a member of a joint investigation team within the meaning of the *Criminal Justice (Joint Investigation Teams) Act 2004.*”

and

(b) in section 4, by the substitution of the following subsection for subsection (1) (inserted by section 5(b) of the Europol Act 1997):

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“(1) The Minister may by regulations, made with the consent of the Minister for Health and Children, provide for the keeping of a record of—

- (a) the death of a member of the Garda Síochána,
- (b) the death of the spouse or any of such other members of the family of a member of the Garda Síochána as may be specified in the regulations, and
- (c) the birth of a child of a member of the Garda Síochána,

occurring outside the State while the member of the Garda Síochána is serving outside the State with an International United Nations Force, as a liaison officer with Europol or as a member of a joint investigation team within the meaning of the *Criminal Justice (Joint Investigation Teams) Act 2004* and, as respects a death referred to in *paragraph (b)* of this subsection or a birth, in such circumstances as may be specified in the regulations.”.

Use of information.

11.—(1) Any information lawfully obtained by a member or seconded member of a joint investigation team or a part of such a team while operating in the State in his or her capacity as such a member or seconded member that is not otherwise available to the competent authorities of the Member States (including the State) that established the team may be used for but only for—

- (a) the purposes for which the joint investigation team was established,
- (b) subject to *subsection (2)*, the detection, investigation and prosecution of criminal offences other than those in respect of which the team was established if the prior consent of the Member State where such information became available has been obtained,
- (c) the prevention of an immediate and serious threat to public security in one of the Member States concerned and only if the Member State where such information became available has been informed of such use and, without prejudice to *paragraph (b)*, a criminal investigation is conducted subsequently into any matter arising from such a threat, and
- (d) such other purposes within the scope of this Act as are agreed by the Competent Authority and the competent authority or authorities concerned.

(2) The consent of the State under *subsection (1)(b)* may be withheld only in cases in which—

- (a) the use of the information concerned would prejudice criminal investigations that are being conducted in the State, or

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- (b) the State may refuse assistance or co-operation under Part S.11 VII of the Act of 1994 in respect of the information concerned.

12.—Where a joint investigation team or a part of such a team is operating in the State, seconded members of the team shall— Criminal liability.

- (a) in the case of such seconded members who are members of a police force of another Member State, be regarded as members of the Garda Síochána, and
- (b) in the case of any other such seconded members, be regarded as members of the team who are not members of the Garda Síochána,

with respect to criminal offences committed against them, or by them, in the performance of their functions as such seconded members.

13.—(1) The State shall be liable for any injury, loss or damage caused in another Member State by members of a joint investigation team or a part of such a team in the performance of their functions as seconded members of the team or the part in accordance with the law of the Member State in which the team or the part is operating. Civil liability.

(2) The State shall reimburse another Member State in full in respect of any amount paid by that Member State to any person in respect of such injury, loss or damage as is referred to in *subsection (1)*.

(3) Where in the performance of their functions as seconded members of a joint investigation team or a part of such a team operating in the State, injury, loss or damage is caused by the seconded members, the State shall be liable to pay compensation or damages or provide another appropriate remedy in respect of such injury, loss or damage in the same manner and to the same extent (if any) as it would be liable to pay compensation or damages or provide such a remedy in respect of that injury, loss or damage if it were caused by the members of the team or the part aforesaid in the performance of their functions as such members.

(4) *Subsection (3)* does not preclude the State from seeking reimbursement of any amount of compensation or damages it has paid or other loss it has incurred under that subsection from—

- (a) the competent authority of the Member State that appointed the seconded members of the joint investigation team or the part of it concerned who caused the injury, loss or damage concerned, or
- (b) persons, other than another Member State or its competent authority, who may be liable for the injury, loss or damage concerned.

14.—This Act shall not affect any other arrangements that exist between the State and another Member State or States regarding the establishment or operation of teams (by whatever name called) similar in nature and function to joint investigation teams or any other provisions (statutory or otherwise) in relation to such establishment or operation. Other similar arrangements or provisions not affected.

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Expenses.

15.—Any expenses incurred by the Minister in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Finance, be paid out of moneys provided by the Oireachtas and any expenses incurred by the Minister for Finance in the administration of this Act shall be paid out of moneys provided by the Oireachtas.

Repeal.

16.—Section 5 of the Europol Act 1997 is repealed.

Short title and commencement.

17.—(1) This Act may be cited as the Criminal Justice (Joint Investigation Teams) Act 2004.

(2) This Act shall come into operation on such day or days as the Minister may appoint by order or orders either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or different provisions.

SCHEDULE

Section 1(1).

FRAMEWORK DECISION OF 13 JUNE 2002 OF THE COUNCIL OF THE
EUROPEAN UNION ON JOINT INVESTIGATION TEAMS

PART 1

**TREOIRCHINNEADH ÓN gCOMHAIRLE 2002/465/CGB
an 13 Meitheamh 2002**

maidir le foirne comhphárteacha um imscrúdú

TÁ COMHAIRLE AN AONTAIS EORPAIGH,

Ag féachaint don Chonradh ar an Aontas Eorpach, agus go háirithe d'Airteagal 34(2)(b) de,

Ag féachaint don tionscnamh ó Ríocht na Beilge, ó Phoblacht na Fraince, ó Ríocht na Spáinne agus ón Ríocht Aontaithe ¹,

Ag féachaint don tuairim ó Pharlaimint na hEorpa ²,

De bhrí:

(1) Go bhfuil sé ar cheann de chuspóirí an Aontais ardleibhéal sábháilteachta a chur ar fáil dá chuid saoránach laistigh de réimse saoirse, slándála agus ceartais agus go bhfuil an cuspóir sin le gnóthú tríd an gcoiriúlacht a chosc agus a chomhrac trí chomhar níos dlúithe idir na fórsaí póilíníochta, na húdaráis chustaim agus údaráis inniúla eile sna Ballstáit agus lena linn sin na prionsabail á n-urramú acu a bhaineann le cearta an duine agus saoirsí bunúsacha agus smacht reachta ar a bhfuil an tAontas fothaithe agus is coiteann do na Ballstáit.

(2) Gur iarr an Chomhairle Eorpach in Tampere an 15 agus 16 Deireadh Fómhair 1999 foirne comhphárteacha um imscrúdú dá bhforáiltear sa Chonradh a chur ar bun gan mhoill, mar chéad chéim, chun an gháinneáil i ndrugaí, an cheannaíocht i ndaoine agus an sceimhlitheoireacht a chomhrac.

(3) Go bhfuil forálacha leagtha síos in Airteagal 13 den Choinbhinsiún arna bhunú ag an gComhairle i gcomhréir le hAirteagal 34 den Chonradh ar an Aontas Eorpach um Chúnamh Frithpháirt-each in Ábhair Choiriúla idir Ballstáit an Aontais Eorpaigh³ ar mhaithe le bunú agus oibríocht foirne comhphárteacha um imscrúdú.

(4) Áitíonn an Chomhairle go nglactar gach beart chun a áirithiú go ndéantar an Coinbhinsiún seo a dhaingniú a luaithe is féidir, agus le linn 2002 ar aon chaoi.

(5) Aithníonn an Chomhairle go bhfuil sé tábhachtach an glaoch ón gComhairle Eorpach maidir le foirne comhphárteacha um imscrúdú a chur ar bun gan mhoill a fhreagairt go gasta.

(6) Measann an Chomhairle gurb iomchuí, d'fhonn an choiriúlacht idirnáisiúnta a chomhrac a éifeachtaí agus is féidir, ag an gcéim seo go nglacfaí ag leibhéal an Aontais ionstraim shonrach atá ceangailteach ó thaobh dlí maidir le foirne comhphárteacha um imscrúdú agus go mbeadh sí infheidhme ar imscrúduithe comhphárteacha a bhaineann leis an ngáinneáil i ndrugaí, leis an gceannaíocht i ndaoine agus leis an sceimhlitheoireacht.

¹ IO C 295, 20.10.2001, lch.9.

² Tuairim arna tabhairt ar an 13 Samhain 2001 (nach bhfuil foilsithe fós san IO).

³ IO C 197, 12.7.2000, lch.1.

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(7) Measann an Chomhairle gur chóir foirne den sórt sin a chur ar bun mar thosaíocht chun cionta arna ndéanamh ag sceimhlitheoirí a chomhrac.

(8) Na Ballstáit a chuireann foireann ar bun, ba chóir dóibh a comhdhéanamh, a cuspóir agus a ré a chinneadh.

(9) Na Ballstáit a chuireann foireann ar bun, ba chóir go mbeadh an chaoi acu a chinneadh, nuair is féidir sin agus i gcomhréir leis an dlí is infheidhme, ligean do dhaoine nach n-ionadaíonn na húdaráis inniúla sna Ballstáit páirt a ghlacadh i ngníomhaíochtaí na foirne, agus gur féidir a áireamh ar na daoine sin ionadaithe, mar shampla, do Europol, don Choimisiún (OLAF) nó ionadaithe do na húdaráis sna neamhBhallstáit, agus go háirithe ionadaithe do na húdaráis um fhorghníomhú an dlí sna Stáit Aontaithe. Sna cásanna sin, ba chóir go sonrúfaí sa chomhaontú lena gcuirtear an fhoireann ar bun na saincheisteanna a bhaineann le dliteanas ionchasach i dtaca leis na hionadaithe sin.

(10) Ba chóir d'fhoireann chomhpháirteach um imscrúdú oibriú ar chríoch Ballstáit i gcomhréir leis an dlí is infheidhme sa Bhallstát sin.

(11) Ba chóir go mbeadh an Treoirchinneadh seo gan dochar d'aon fhorálacha nó socruithe atá ann maidir le cur ar bun nó oibriú foirne comhpháirteacha um imscrúdú,

TAR ÉIS AN TREOIRCHINNEADH SEO A GHLACADH:

Airteagal 1

Foirne comhpháirteacha um imscrúdú

1. Féadfaidh na húdaráis inniúla in dhá Bhallstát nó níos mó, de thoil a chéile, foireann chomhpháirteach um imscrúdú a chur ar bun ar mhaithe le cuspóir sonracha agus go ceann tréimhse teoranta, is féidir a shíneadh de thoil a chéile, chun imscrúduithe coiriúla a chur i gcrích i mBallstát amháin nó níos mó a chuireann an fhoireann ar bun. Beidh comhdhéanamh na foirne leagtha amach sa chomhaontú.

Féadfar foireann chomhpháirteach um imscrúdú a chur ar bun, go háirithe:

- (a) nuair a éilíonn imscrúduithe de chuid Ballstáit maidir le cionta coiriúla imscrúduithe deacra achranacha a bhfuil naisc acu le Ballstáit eile;
- (b) nuair atá roinnt Ballstát ag seoladh imscrúduithe maidir le cionta coiriúla ina n-éilíonn imthosca an cháis gníomhaíocht chomhordaithe, chomhbheartaithe sna Ballstáit i dtrácht.

Féadfaidh aon cheann de na Ballstáit i dtrácht iarraidh a dhéanamh chun foireann chomhpháirteach um imscrúdú a chur ar bun. Cuirfeadh an fhoireann ar bun i gceann de na Ballstáit ina bhfuiltear ag súil go gcuirfeadh na himscrúduithe i gcrích.

2. I dteannta leis an bhfaisnéis dá dtagraítear sna forálacha ábhartha d'Airteagal 14 den Choinbhinsiún Eorpach um Chúnamh Frithpháirteach in Ábhair Choiriúla agus d'Airteagal 37 de Chonradh Benelux an 27 Meitheamh 1962, mar atá arna leasú le Prótocal an 11 Bealtaine 1974, beidh in iarrataí chun foireann chomhpháirteach um imscrúdú a chur ar bun tograí maidir le comhdhéanamh na foirne.

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3. Oibreoidh foireann chomhpháirteach um imscrúdú ar chríoch na mBallstát a chuireann an fhoireann ar bun faoi na coinníollacha ginearálta seo a leanas:

- (a) Beidh i gceannas ar an bhfoireann ionadaí ón údarás inniúil atá rannpháirteach in imscrúduithe coiriúla ón mBallstát ina bhfuil an fhoireann ag oibriú. Gníomhóidh ceannaire na foirne laistigh de theorainneacha a (h)inniúlachta faoin dlí náisiúnta.
- (b) Cuirfidh an fhoireann a cuid oibríochtaí i gcrích i gcomhréir le dlí an Bhallstáit ina bhfuil sí ag oibriú. Cuirfidh baill na foirne a gcuid cúraimí i gcrích faoi cheannaireacht an duine dá dtagraítear i bhfomhír (a), ag féachaint do na coinníollacha arna socrú ag a gcuid údarás féin sa chomhaontú maidir leis an bhfoireann a chur ar bun.
- (c) Déanfaidh an Ballstát ina bhfuil an fhoireann ag oibriú na socrúithe eagrúcháin is gá chuige sin.

4. Sa Treoirchinneadh seo, deirtear go bhfuil na baill den fhoireann chomhpháirteach um imscrúdú ó Bhallstáit seachas an Ballstát ina bhfuil an fhoireann ag oibriú “ar iasacht” don fhoireann.

5. Beidh na baill atá ar iasacht den fhoireann chomhpháirteach um imscrúdú i dteideal bheith i láthair nuair a ghlactar bearta um imscrúdú sa Bhallstát ina bhfuil an oibríocht ar siúl. Ar a shon sin, féadfaidh ceannaire na foirne, ar chúiseanna ar leith, i gcomhréir le dlí an Bhallstáit ina bhfuil an fhoireann ag oibriú, a mhalairt a chinneadh.

6. Féadfaidh ceannaire na foirne, i gcomhréir le dlí an Bhallstáit ina bhfuil an fhoireann ag oibriú, an cúram a chur ar bhail atá ar iasacht den fhoireann chomhpháirteach um imscrúdú bearta áirithe um imscrúdú a ghlacadh má tá a leithéid formheasta ag na húdaráis inniúla i mBallstát na hoibríochta agus sa Bhallstát a thug ar iasacht iad.

7. Má theastaíonn ón bhfoireann chomhpháirteach um imscrúdú go nglactar bearta um imscrúdú i gceann de na Ballstáit a chuireann an fhoireann ar bun, féadfaidh baill atá ar iasacht don fhoireann ag an mBallstát sin a iarraidh ar a n-údarás inniúla féin na bearta sin a ghlacadh. Breithneofar na bearta sin sa Bhallstát sin faoi na coinníollacha a bheadh infheidhme dá n-iarrfaí iad in imscrúdú náisiúnta.

8. Má theastaíonn ón bhfoireann chomhpháirteach um imscrúdú cúnaimh a fháil ó Bhallstát seachas iad sin a chuir an fhoireann ar bun, nó ó thríú Stát, féadfaidh na húdaráis inniúla i Stát na n-oibríochtaí an iarraidh ar chúnamh a dhéanamh ar na húdaráis inniúla sa Stát eile i dtrácht i gcomhréir leis na hionstraimí nó socrúithe ábhartha.

9. Féadfaidh ball den fhoireann chomhpháirteach um imscrúdú, i gcomhréir leis an dlí náisiúnta aige/aici agus laistigh de theorainneacha a (h)inniúlachta, faisnéis atá ar fáil sa Bhallstát a thug ar iasacht é/í a sholáthar don fhoireann ar mhaithe leis na himscrúduithe coiriúla arna seoladh ag an bhfoireann.

10. Faisnéis arna fáil go dleathach ag ball nó ag ball atá ar iasacht le linn dó/di bheith ina c(h)uid d’fhoireann chomhpháirteach um imscrúdú agus nach bhfuil ar fáil ar shlí eile do na húdaráis inniúla sna Ballstáit i dtrácht, féadfar í a úsáid chun na gcríoch seo a leanas:

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- (a) ar mhaithe leis na críocha ar cuireadh an fhoireann ar bun ina leith;
- (b) faoi réir toiliú roimh ré ón mBallstát ina bhfuarthas an fhaisnéis, chun cionta coiriúla eile a bhrath, a imscrúdú agus a ionchúiseamh. Ní fhéadfar an toiliú sin a dhiúltú ach amháin i gcásanna ina ndochródh úsáid na faisnéise sin imscrúduithe coiriúla sa Bhallstát i dtrácht nó ina bhféadfadh an Ballstát sin cúnaimh frithpháirteach a dhiúltú ina leith;
- (c) chun bagairt láithreach thromchúiseach ar an tslándáil phoiblí a chosc agus gan dochar d'fhomhír (b) má osclaítear imscrúdú coiriúil iardain;
- (d) chun críoch eile a mhéad atá a leithéid comhaontaithe idir na Ballstáit a chuireann an fhoireann ar bun.

11. Beidh an Treoirchinneadh seo gan dochar d'aon fhorálacha nó socruithe eile atá ann maidir le cur ar bun nó oibríocht foirne comhpháirteacha um imscrúdú.

12. A mhéad a cheadaíonn dlíthe na mBallstát i dtrácht nó forálacha aon ionstraimhe dlí is infheidhme eatarthu iad, féadfar socruithe a chomhaontú chun go dtig le daoine seachas ionadaithe do na húdaráis inniúla sna Ballstáit a chuireann an fhoireann chomhpháirteach um imscrúdú ar bun páirt a ghlacadh i ngníomhaíochtaí na foirne. Féadfar a áireamh ar na daoine sin, mar shampla, oifigigh do chomhlachtaí arna gcur ar bun de bhun an Chonartha. Na cearta arna dtabhairt do na baill den fhoireann nó do na baill atá ar iasacht den fhoireann de bhua an Treoirchinnidh seo, ní bheidh siad infheidhme ar na daoine sin mura sonraítear a mhalairt go sainráite sa chomhaontú.

Airteagal 2

Dlíteanas coiriúil maidir le hoifigigh

Le linn na n-oibríochtaí dá dtagraítear in Airteagal 1, measfar go bhfuil oifigigh ó Bhallstát seachas Ballstát na hoibríochta ina n-oifigigh do Bhallstát na hoibríochta maidir le cionta arna ndéanamh ina gcoinne nó arna ndéanamh acu.

Airteagal 3

Dlíteanas sibhialta maidir le hoifigigh

1. Nuair atá oifigigh do Bhallstát, i gcomhréir le hAirteagal 1, ag oibriú i mBallstát eile, beidh an chéad Bhallstát freagrach as aon damáiste arna dhéanamh acu le linn a gcuid oibríochtaí, i gcomhréir le dlí an Bhallstáit a bhfuil siad ag oibriú ar a chríoch.

2. An Ballstát ar ar a chríoch a rinneadh an damáiste dá dtagraítear i mír 1, slánóidh sé an damáiste sin faoi na coinníollacha is infheidhme ar dhamáiste arna dhéanamh ag a chuid oifigeach féin.

3. An Ballstát arbh iad a chuid oifigeach a rinne damáiste d'aon duine ar chríoch Ballstáit eile, cúiteoidh sé go hiomlán leis an mBallstát eile sin aon suimeanna atá íoctha aige leis na híospartaigh nó le daoine a bhí ina dteideal thar a gceann.

4. Gan dochar d'fheidhmiú a cheart i leith tríú páirtithe agus amach ó mhír 3, staonfaidh gach Ballstát, sa chás dá bhforáiltear i

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mír 1, ó chúiteamh damáistí atá fulaingthe aige a iarraidh ar Bhallstát Sch eile.

Airteagal 4

Cur chun feidhme

1. Glacfaidh na Ballstáit na bearta is gá chun forálacha an Treoirchinnidh seo a chomhlíonadh faoi 1 Eanáir 2003.

2. Tarchuirfidh na Ballstáit chuig Ardrúnaíocht na Comhairle agus chuig an gCoimisiún téacs aon fhorálacha a thrasúionn ina ndlí náisiúnta na hoibleagáidí arna bhforchur orthu faoin Treoirchinneadh seo. Ar an mbonn sin agus ar bhonn aon fhaisnéise eile, cuirfidh an Coimisiún, faoi 1 Iúil 2004, tuarascáil faoi bhráid na Comhairle maidir le hoibríocht an Treoirchinnidh seo. Déanfaidh an Chomhairle a mheas a mhéad atá an Treoirchinneadh seo comhlíonta ag na Ballstáit.

Airteagal 5

Teacht i bhfeidhm

Tiocfaidh an Treoirchinneadh seo i bhfeidhm ar lá a fhoilsithe in Iris Oifigiúil na gComhphobal Eorpach. Scoirfidh sé d'aon éifeacht a bheith aige nuair atá an Coinbhinsiún um Chúnaimh Frithpháirt-each in Ábhair Choiriúla idir Ballstáit an Aontais Eorpaigh tagtha i bhfeidhm sna Ballstáit uile.

Arna dhéanamh i Lucsamburg, an 13 Meitheamh 2002.

Thar ceann na Comhairle
An tUachtarán
M. RAJOY BREY

PART 2

**COUNCIL FRAMEWORK DECISION 2002/465/JHA
of 13 June 2002
on joint investigation teams**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the European Union, and in particular Article 34(2)(b) thereof,

Having regard to the initiative of the Kingdom of Belgium, the French Republic, the Kingdom of Spain and the United Kingdom¹,

Having regard to the opinion of the European Parliament²,

Whereas:

(1) One of the Union's objectives is to provide citizens with a high level of safety within an area of freedom, security and justice and this objective is to be achieved by preventing and combating crime through closer co-operation between police forces, customs authorities and other competent authorities in the Member States, while respecting the principles of human rights and fundamental freedoms

¹ OJ C 295, 20.10.2001, p.9.

² Opinion delivered on 13 November 2001 (not yet published in the Official Journal).

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and the rule of law on which the Union is founded and which are common to the Member States.

(2) The European Council held in Tampere on 15 and 16 October 1999 called for joint investigation 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.

(3) Provision has been made in Article 13 of the Convention established by the Council in accordance with Article 34 of the Treaty on European Union on Mutual Assistance in Criminal Matters between the Member States of the European Union³ for the establishment and operation of joint investigation teams.

(4) The Council urges that all measures be taken to ensure that this Convention is ratified as soon as possible, and in any event in the course of 2002.

(5) The Council recognises that it is important to respond quickly to the European Council's call for the setting up of joint investigative teams without delay.

(6) The Council considers that for the purpose of combating international crime as effectively as possible, it is appropriate that at this stage a specific legally binding instrument on joint investigation teams should be adopted at the level of the Union which should apply to joint investigations into trafficking in drugs and human beings as well as terrorism.

(7) The Council considers that such teams should be set up, as a matter of priority, to combat offences committed by terrorists.

(8) The Member States that set up a team should decide on its composition, purpose and duration.

(9) The Member States setting up a team should have the possibility to decide, where possible and in accordance with applicable law, to let persons not representing the competent authorities of Member States take part in the activities of the team, and that such persons may include representatives of, for example, Europol, the Commission (OLAF) or representatives of authorities of non Member States, and in particular representatives of law enforcement authorities of the United States. In such cases the agreement setting up the team should specify issues relating to possible liability for such representatives.

(10) A joint investigating team should operate in the territory of a Member State in conformity with the law applicable to that Member State.

(11) This Framework Decision should be without prejudice to any other existing provisions or arrangements on the setting up or operation of joint investigation teams,

HAS ADOPTED THIS FRAMEWORK DECISION:

Article 1

Joint investigation teams

1. By mutual agreement, the competent authorities of two or more Member States may set up a joint investigation team for a specific

³ OJ C 197, 12.07.2000, p.1.

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purpose and a limited period, which may be extended by mutual consent, to carry out criminal investigations in one or more of the Member States setting up the team. The composition of the team shall be set out in the agreement. SCH

A joint investigation team may, in particular, be set up where:

- (a) a Member State's investigations into criminal offences require difficult and demanding investigations having links with other Member States;
- (b) a number of Member States are conducting investigations into criminal offences in which the circumstances of the case necessitate coordinated, concerted action in the Member States involved.

A request for the setting up of a joint investigation team may be made by any of the Member States concerned. The team shall be set up in one of the Member States in which the investigations are expected to be carried out.

2. In addition to the information referred to in the relevant provisions of Article 14 of the European Convention on Mutual Assistance in Criminal Matters and Article 37 of the Benelux Treaty of 27 June 1962, as amended by the Protocol of 11 May 1974, requests for the setting up of a joint investigation team shall include proposals for the composition of the team.

3. A joint investigation team shall operate in the territory of the Member States setting up the team under the following general conditions:

- (a) The leader of the team shall be a representative of the competent authority participating in criminal investigations from the Member State in which the team operates. The leader of the team shall act within the limits of his or her competence under national law.
- (b) The team shall carry out its operations in accordance with the law of the Member State in which it operates. The members of the team shall carry out their tasks under the leadership of the person referred to in subparagraph (a), taking into account the conditions set by their own authorities in the agreement on setting up the team.
- (c) The Member State in which the team operates shall make the necessary organisational arrangements for it to do so.

4. In this Framework Decision, members of the joint investigation team from Member States other than the Member State in which the team operates are referred to as being "seconded" to the team.

5. Seconded members of the joint investigation team shall be entitled to be present when investigative measures are taken in the Member State of operation. However, the leader of the team may, for particular reasons, in accordance with the law of the Member State where the team operates, decide otherwise.

6. Seconded members of the joint investigation team may, in accordance with the law of the Member State where the team operates, be entrusted by the leader of the team with the task of taking certain investigative measures where this has been approved by the

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competent authorities of the Member State of operation and the seconding Member State.

7. Where the joint investigation team needs investigative measures to be taken in one of the Member States setting up the team, members seconded to the team by that Member State may request their own competent authorities to take those measures. Those measures shall be considered in that Member State under the conditions which would apply if they were requested in a national investigation.

8. Where the joint investigation team needs assistance from a Member State other than those which have set up the team, or from a third State, the request for assistance may be made by the competent authorities of the State of operations to the competent authorities of the other State concerned in accordance with the relevant instruments or arrangements.

9. A member of the joint investigation team may, in accordance with his or her national law and within the limits of his or her competence, provide the team with information available in the Member State which has seconded him or her for the purpose of the criminal investigations conducted by the team.

10. Information lawfully obtained by a member or seconded member while part of a joint investigation team which is not otherwise available to the competent authorities of the Member States concerned may be used for the following purposes:

- (a) for the purposes for which the team has been set up;
- (b) subject to the prior consent of the Member State where the information became available, for detecting, investigating and prosecuting other criminal offences. Such consent may be withheld only in cases where such use would endanger criminal investigations in the Member State concerned or in respect of which that Member State could refuse mutual assistance;
- (c) for preventing an immediate and serious threat to public security, and without prejudice to subparagraph (b) if subsequently a criminal investigation is opened;
- (d) for other purposes to the extent that this is agreed between Member States setting up the team.

9. This Framework Decision shall be without prejudice to any other existing provisions or arrangements on the setting up or operation of joint investigation teams.

12. To the extent that the laws of the Member States concerned or the provisions of any legal instrument applicable between them permit, arrangements may be agreed for persons other than representatives of the competent authorities of the Member States setting up the joint investigation team to take part in the activities of the team. Such persons may, for example, include officials of bodies set up pursuant to the Treaty. The rights conferred upon the members or seconded members of the team by virtue of this Framework Decision shall not apply to these persons unless the agreement expressly states otherwise.

Article 2

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Criminal liability regarding officials

During the operations referred to in Article 1, officials from a Member State other than the Member State of operation shall be regarded as officials of the Member State of operation with respect to offences committed against them or by them.

Article 3

Civil liability regarding officials

1. Where, in accordance with Article 1, officials of a Member State are operating in another Member State, the first Member State shall be liable for any damage caused by them during their operations, in accordance with the law of the Member State in whose territory they are operating.

2. The Member State in whose territory the damage referred to in paragraph 1 was caused shall make good such damage under the conditions applicable to damage caused by its own officials.

3. The Member State whose officials have caused damage to any person in the territory of another Member State shall reimburse the latter in full any sums it has paid to the victims or persons entitled on their behalf.

4. Without prejudice to the exercise of its rights *vis-à-vis* third parties and with the exception of paragraph 3, each Member State shall refrain, in the case provided for in paragraph 1, from requesting reimbursement of damages it has sustained from another Member State.

Article 4

Implementation

1. Member States shall take the necessary measures to comply with the provisions of this Framework Decision by 1 January 2003.

2. Member States shall transmit to the General Secretariat of the Council and the Commission the text of any provisions transposing into their national law the obligations imposed on them under this Framework Decision. On the basis of this and other information, the Commission shall, by 1 July 2004, submit a report to the Council on the operation of this Framework Decision. The Council shall assess the extent to which the Member States have complied with this Framework Decision.

Article 5

Entry into force

This Framework Decision shall enter into force on the date of its publication in the Official Journal. It shall cease to have effect when the Convention on Mutual Assistance in Criminal Matters between Member States of the European Union has entered into force in all Member States.

Done at Luxembourg, 13 June 2002.

For the Council
The President
M. RAJOY BREY