



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 21 March 2007

7494/07

EUROPOL 23

OUTCOME OF PROCEEDINGS

of :	Europol Working Party
on :	13 and 14 March 2007
Subject :	Summary of discussions

1. Adoption of the agenda

The agenda was adopted as set out in document CM 812/1/07 REV 1.

2. Data protection and data Security

Both the Chairman of the Europol JSB and the deputy European Data Protection Supervisor extensively presented their respective opinions concerning the Commission proposal for a Council Decision establishing Europol, contained in documents 7083/07 EUROPOL 20 and 6524/07 EUROPOL 15 respectively.

It was stated that, subject to the necessary data protection guarantees, it was mandatory to provide Europol with pragmatic and practical working conditions and tools.

The Chairman explained that a number of the comments made by these supervisory bodies had already been taken care of as a result of the Working Party's discussion on the first chapters of the proposal. The remaining comments concerning Chapter I would be taken into account when discussing the outstanding questions on these provisions at the Article 36 Committee meeting of 22-23 March 2007.

Those comments relating to the data protection provisions would be dealt with in the ensuing discussion of the relevant chapter of the proposal.

The meeting consequently examined in detail Chapter V of the Commission proposal.

Article 26

It is considered that a general study reservation applies to this Article, given the on-going discussion on the Framework Decision on Data Protection for the third pillar. When the result of these discussions would become more clear, this Article would be revisited to see if and how it should be adapted. Some preliminary drafting comments were made.

Article 27

The meeting welcomed the instauration of a data protection officer but requested that it be clarified that this person would be designated by and reporting to the Management Board. Furthermore, a majority of delegations requested that it be clarified that the DPO's competence is limited to Europol's data processing and should not cover the data processing by the national desks. Finally, the relationship between the DPO and the JSB might be specified.

Article 28

The terminology used in this Article should be checked carefully and, as a consequence, it should be examined whether paragraph 2 was really necessary. A clear and transparent solution should be found for data that are not yet processed and can be kept as such for 6 months.

Article 29

Since this provision seems to create a confusion between the right of access and the right of verification and to unduly lower the data protection standards, it was proposed to re-draft it on the basis of Article 19 of the Europol Convention. Notably the refusal grounds should be checked in detail. The period of 3 months, criticised by the data protection authorities, seems to be justified by practical reasons.

Article 30

No comments were made on this Article except for a clarification request concerning the need to refer to not up-to-date data and the relationship of the last sentence of paragraph 5 with Article 31.

Article 31

It was asked to clarify a number of questions about this Article, in particular

- why the request for correction and deletion of data is added to the first sentence of paragraph 1
- why the refusal of access takes into account national law (paragraph 3)
- whether there should be a specific reference to processing of non-automated data.

Article 32

It was requested to improve the drafting of the last sentence of paragraph 2 to clarify the competences of the different Data Protection authorities and the DPO.

Article 33

It was agreed

- to move paragraph 4 to Article 29
- to delete the last words of paragraph 6 as well as the last part of paragraph 8 and
- to replace the last sentence of paragraph 7 with the current wording of the Convention.

In paragraph 12, the status of the secretariat could be specified.

Article 34

While it was suggested to refer to international standards rather than to list data security measures, it was also pointed out that changes to the existing data security rules could affect the physical infrastructure and entail costs.

The Chair informed the meeting that this Chapter V would be re-examined after further consultation at national level and with the Commission and also in view of the discussions concerning the Framework Decision on Data Protection.

3. Financing and staff issues

The Chair of the Working Party on Staff Regulations informed the meeting about the preliminary outcome of that WP's discussion on the questions related to the proposal for a Council Decision establishing Europol. The final opinion should be discussed at the next meeting of this WP on 21 March 2007 and be available immediately after.

A long discussion was held about whether or not the change from Member States' financing to Community financing would be budget neutral. Between the information from the Commission, Europol and the WP on Staff Regulations, there is no convergence on the way to calculate the future budgets and the budget impact but it would seem that the change to Community financing might cause an increase in the budget. Delegations indicated that such an increase was not in itself a problem, if this would lead to a better functioning and more effectiveness of Europol. This is, however, the political question to be submitted to Ministers.

The principle of rotating staff would not be a problem under the new SR and it would also remain possible to reserve certain posts for law enforcement officers, albeit through a different procedure than the current one, requiring a written justification for such reservations. Even if some delegations still harboured doubts, it is thought that in practice this will essentially not lead to changes.

The question of compatibility of Article 11 of the Staff Regulations (prohibition to receive instructions from the MS) with the rules on JITs would have to be further examined to find a way to ensure that a Europol staff member, when participating in a JIT, could receive instructions from the JIT leader.

Finally, it is also still being examined whether and how it would be possible to ensure that, when a Europol staff member is participating in a JIT, he is not immune from legal proceedings for his activities related to the JIT.

In that context, the Chairman explained the difficulties of timing and coordination on this matter given the late arrival of information requested from the Commission and the tight calendar of meetings (Europol Working Party, Working Party on Staff regulations, CATS).

The Chairman announced that the Presidency intended to issue 2 documents to the Article 36 Committee in order to prepare the Council:

- a cover note setting out two options for changing the Europol Convention to a Council Decision: on the one hand, based on Member State financing and on the other hand, on the basis of the Commission proposal currently under discussion
- a document gathering all the information received from the different parties on the assessment of the budget neutrality

The Chair also envisaged to submit Articles 1 to 9 to the Article 36 Committee with a view to discussing outstanding issues on this Chapter I of the proposal, taking into account the opinions of the supervisory bodies referred to under point 2 of this meeting.

A number of delegations pointed to the fact that clear political instructions on the staff and financing issues are necessary for the further discussion of the proposal and notably for Chapter I.