



**COUNCIL OF
THE EUROPEAN UNION**

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EUROPOL 24

NOTE

from :	Presidency
to :	Europol Working Party
No. prev. doc. :	5055/07 EUROPOL 2
Subject :	Proposal for a Council Decision establishing the European Police Office (EUROPOL) - revised version of chapter I

1. The German Presidency has begun discussing the Commission's draft Council Decision establishing the European Police Office in the Europol Working Party. Discussion initially focused on Chapter 1 (Articles 1 to 9 - establishment and tasks) of the Commission draft.
2. The Europol Working Party's discussions on this Chapter have raised the following points:
 - A number of delegations feel that the rule in Article 1(1) of the draft ("...establishes a European Police Office.... as an agency of the Union") does not properly reflect Europol's current legal independence as an organisation. Europol should continue to be able to conclude agreements with third countries and authorities independently, as an international legal person.

- Some delegations feel there should be a greater role for national units. Accordingly, it is now suggested in Article 8(7) that the HENUs should meet at least twice a year at the level of senior national police officers with the power to decide on the implementation of operational measures. This should allow even closer cooperation between Europol and national police forces.

3. Both the European Data Protection Supervisor (6524/07 EUROPOL 15) and the Joint Supervisory Body of Europol (7083 EUROPOL 20) have given their opinions on the Commission draft. The opinions of the Data Protection Supervisor and the Joint Supervisory Body were clarified in the Europol Working Party meeting on 13 March 2007.

In the light of these opinions, attention is drawn to the following points regarding Article 1 to 9 which have not yet been taken into account in the revised version of Chapter I contained in annex:

- In Article 4(1), the wording of Article 2(1) of the Europol Convention should be reinstated. Europol should take responsibility only when two or more Member States are affected by the forms of crime in question in such a way as to require "a common approach by the Member States owing to the scale, significance and consequences of the offences...".
- Article 4(3) of the draft extends Europol's powers to cover all forms of related offences in respect of money laundering, without further qualification. The restriction in Article 2(3) of the EPC, ruling out predicate offences which do not come within Europol's sphere of competence, has been removed: it should be reinstated.
- The processing of personal data from other public or private entities under Article 5(1)(a) of the draft should take place exclusively via national units. Only publicly accessible data should be exchanged directly with these entities.

4. The Europol Working Party's revised version of Chapter I is attached, so that the Article 36 Committee can take cognisance of it, discuss the points raised in sections 2 and 3 of this note and approve it in principle.

CHAPTER I - ESTABLISHMENT AND TASKS

Article 1 *Establishment*

1. This Decision, ***replacing the Convention based on Article K.3 of the Treaty on European Union, on the establishment of a European Police Office ("the Europol Convention")***, establishes a European Police Office, hereinafter referred to as 'Europol', as an agency of the Union. Europol shall have its seat in The Hague, the Netherlands¹.
2. Europol shall be regarded as the legal successor of Europol, as established the Europol Convention.
3. ***Europol shall liaise with a single national unit in each Member State, to be established or designated in accordance with Article 8.***²

Article 2 *Legal capacity*

1. Europol shall have legal personality.
2. Europol shall enjoy in each Member State the most extensive legal and contractual capacity available to legal persons under that State's law. Europol may in particular acquire and dispose of movable or immovable property and be a party to legal proceedings.
3. Europol shall be empowered to conclude a headquarters agreement with the Kingdom of the Netherlands.

Article 3 *Objective*

The objective of Europol shall be to support and strengthen action by the competent authorities of the Member States and their mutual co-operation in preventing and combating ***organised crime, terrorism and other forms of serious crime*** affecting two or more Member States. For the purposes of this Decision, 'competent authorities' means all public bodies existing in the Member States, which are responsible under national law for preventing and combating criminal offences.³

¹ This wording is supposed to show that this is merely about a change in the legal framework, and is not about creating Europol anew.

² At the request of numerous Member States (MS) the reference to the national units should be maintained in Art. 1.

³ The vast majority of MS generally supported the wording of the Commission's draft and was also in favour of adapting the text to the wording of Art. 4(1). The fact that organised crime and terrorism are mentioned first is supposed to show that these will continue to be Europol's priority

Article 4
Competence

1. The competence of Europol shall cover ***organised crime, terrorism and other forms of serious crime*** affecting two or more Member States., ~~in particular organised crime and terrorism.~~⁴
2. For the purposes of this Decision, the forms of crime laid down in Annex I to this Decision shall be regarded as serious crime ***when there are serious grounds to believe that these offences may be related to organised criminal activities or when they seriously affect the integrity or the dignity of human beings.***⁵
3. Europol's competence shall also cover related criminal offences. The following offences shall be regarded as related criminal offences:
 - criminal offences committed in order to procure the means for perpetrating acts within Europol's sphere of competence,
 - criminal offences committed in order to facilitate or carry out acts within Europol's sphere of competence,
 - criminal offences committed to ensure the impunity of acts within Europol's sphere of competence.
4. The Council, ***acting in accordance with Art. 34 (2) (c) acting by a qualified majority, after consulting the European Parliament, after consulting the Management Board,*** shall lay down the priorities for Europol ***on the basis of strategic analyses and regular threat assessments prepared by Europol and in accordance with the Council's wider political objectives. It shall invite Europol to implement these priorities in respect with its competence.***⁶

areas.

⁴ Cf. footnote 3.

⁵ This addition is to ensure that Europol will not have to deal with petty crime once its sphere of responsibility has been extended.

⁶ This wording is to softly put the process of prioritization. Reference to OCTA is in line with JHA decision on OCTA of 23 September 2005. It was also agreed not to mention the involvement of the European Parliament. Reference to Art. 34 TEU goes back to the position held by the legal service of the Council.

Article 5
Tasks

1. Europol shall have the following principal tasks:
 - (a) the collection, storage, processing, analysis and exchange of information and intelligence forwarded by the authorities of the Member States or third countries or other public or private entities;
 - ~~(b) the coordination, organisation and implementation of investigative and operational action carried out jointly with the Member States' competent authorities or in the context of joint investigation teams, where appropriate in liaison with European or third countries bodies;⁷~~
 - (c) to notify the competent authorities of the Member States without delay ***via the national unit referred to in article 8⁸*** of information concerning them and of any connections identified between criminal offences;
 - (d) to aid investigations in the Member States by forwarding all relevant information to the national units;
 - (e) to ask the competent authorities of the Member States concerned to conduct or coordinate investigations in specific cases;
 - (f) to provide intelligence and analytical support to Member States in connection with a major international event ~~with a public order policing impact.⁹~~
 - (g) to prepare threat assessments and general situation reports related to its objective, including a yearly regular organised crime threat assessment.¹⁰***

⁷ In its current version, this provision was rejected by the vast majority of MS. Particularly Europol's powers of organisation were considered excessive (see also Art.30(2) TEU). Furthermore, the provision exactly corresponds to the wording of Art. III-276 of the Constitutional Treaty. For this reason the Presidency generally suggests that the provision be deleted for the time being. If necessary, the Commission may submit a revised wording together with Europol at a later stage – as has already been discussed.

⁸ Adaptation to Art. 3 (1) (3) Europol Convention..

⁹ Since the definition of the term “public order” differs or does not exist in the legal systems of the MS, this phrase should be deleted.

¹⁰ This provision used to be part of Art. 5(4)(c). It was agreed that it should be transferred to para. 1 given the importance of Europol's analysis activities. Furthermore, it was agreed that any reference to the annual preparation of OCTA should be avoided.

- ~~2. The tasks specified in paragraph 1 shall include the co-ordination of investigative actions into criminal activities committed using the Internet, in particular with respect to terrorism-related offences and the distribution of child pornography and other illegal material, as well as monitoring the Internet to assist in the identification of such criminal activities and the persons who have committed them.¹¹~~
- ~~3. Any operational action by Europol shall be carried out in liaison and in agreement with the authorities of the Member State or States whose territory is concerned. The application of coercive measures shall be the exclusive responsibility of the competent national authorities.¹²~~
4. Europol shall have the following additional tasks:
- (a) to develop specialist knowledge of the investigative procedures of the competent authorities in the Member States and to provide advice on investigations;
 - (b) to provide strategic intelligence to assist with and promote the efficient and effective use of the resources available at national and at Union level for operational activities and support of such activities;
 - ~~(c) to prepare threat assessments and general situation reports related to its objective, including a yearly organised crime threat assessment.¹³~~
5. In the *context* of its objective *under* Article 3, Europol may, *in addition, in accordance with the staffing and budgetary resources at its disposal and within the limits set by the Management Board*, assist Member States *through advice and research* in particular in the following areas:¹⁴
- (a) training of members of their competent authorities, ~~where appropriate~~ in cooperation with the European Police College;¹⁵
 - (b) organisation and equipment of those authorities through facilitating the provision of technical support between the Member States;
 - (c) crime prevention methods;
 - (d) technical and forensic methods and analysis, as well as investigative procedures.

¹¹ The majority of MS believes that it is not possible for Europol to monitor the Internet given the limited resources available. Furthermore, Europol has no “mandate for investigations” (see also Art.30(2a) TEU; the MS would need to assign such powers explicitly to Europol. Support tasks and the possibility to encourage the coordination of specific investigative actions are already covered by Europol’s general mandate. For this reason, the paragraph can be deleted completely.

¹² It was agreed that this paragraph, which exactly corresponds to Art. III-276 of the Constitutional Treaty, should be deleted.

¹³ Cf. footnote 10.

¹⁴ It was agreed that the wording of Art. 3(3) of the Europol Convention be maintained.

¹⁵ It was agreed that there should be no restrictions as to the cooperation with CEPOL.

6. *Without prejudice to the Convention for the Suppression of Counterfeiting Currency, signed at Geneva on 20 April 1929, and the protocol thereto, Europol shall also act as the Central Office for combating Euro counterfeiting in accordance with the Council Decision 2005/511/JHA of 12 July 2005¹⁶. Europol can also encourage the coordination of measures carried out in order to fight Euro counterfeiting by the Member States' competent authorities or in the context of joint investigation teams, where appropriate in liaison with European and third countries bodies.*¹⁷

Article 6

Participation in joint investigation teams

1. Europol officials may participate in a support capacity in joint investigation teams, including those teams set up in accordance with Article 1 of the Framework Decision of 13 June 2002 on joint investigation teams, in accordance with Article 13 of the Convention of 29 May 2000 on mutual assistance in criminal matters between the Member States of the European Union, or in accordance with Article 24 of the Convention of 18 December 1997 on mutual assistance and cooperation between customs administrations, *as far as those teams are investigating criminal offences for which Europol is competent under Article 4*. Europol officials may, *within the limits provided for by the law of the Member state where the joint investigation team operates and* in accordance with the arrangement referred to in paragraph 3, assist in all activities and exchange information with all members of the joint investigation team, in accordance with paragraph 5. *However, they shall not take part in the taking of any coercive measures.*

~~Within that context, they may also suggest that national members of a joint investigation team take specific coercive measures.~~¹⁸

- ~~2. In those cases where a joint investigation team is set up to deal with cases of counterfeiting of the Euro currency, a Europol official may be appointed to direct the investigation, under the direct responsibility of the leader of the team. Where there is a difference of opinion between the Europol official thus appointed and the team leader, the latter's opinion shall prevail.~~¹⁹

¹⁶ Adaptation to the above-mentioned Council Decision of 12 July 2005.

¹⁷ It was agreed that the paragraph should be brought in line with the Council decision of 2005 on Europol's function as a central office for combating Euro counterfeiting and Art. 3(4) of the Europol Convention in the version of the third Amending Protocol. Sentence 2 is intended to highlight Europol's special role in combating Euro counterfeiting, also in operational terms, without intervening in the MS own competences. Therefore Europol should not be given a coordination right (such a right would be in breach of Art. 30(2a) TEU).

¹⁸ It was agreed that it was unnecessary to have a provision on the mere right to make proposals. Furthermore, the text should be brought in line with Art. 3a(1) of the Europol Convention.

¹⁹ The vast majority of MS believed that this provision went too far. Particularly the division of responsibilities does not seem feasible in practical police work.

3. The administrative implementation of the participation of Europol officials in a joint investigation team shall be laid down in an arrangement between the Director of Europol and the competent authorities of the Member States participating in the joint investigation team, with the involvement of the National Units. The rules governing such arrangements shall be determined by the Management Board.
4. Europol officials shall carry out their tasks under the leadership of the team leader, taking into account the conditions laid down in the arrangement referred to in paragraph 3.
5. ~~Europol officials may liaise directly with the members of the joint investigation team and provide members and seconded members of the joint investigation team with information in accordance with this Decision, taking into account the conditions laid down in the arrangement referred to in paragraph 3.~~
*In accordance with the arrangement referred to in paragraph 3, officials of Europol may liaise directly with the members of the joint investigation team and provide members and seconded members of the joint investigation team, in accordance with the present Decision, with information from any of the components of the computerised system of collected information referred to in Article 10. In case of direct liaison, all National Units of the Member States represented in the team as well as the Member States which provided the information shall at the same time be informed thereof by the Member State which provided the information or by Europol in case Europol provided the information.*²⁰
6. *Information obtained by a Europol official while part of a joint investigation team may, with the consent and under the responsibility of the Member State which provided the information, be included in any of the components of the computerised system under the conditions laid down in this Decision.*²¹
7. During the operations of a joint investigation team, Europol officials shall, with respect to offences committed against or by them, be subject to the national law of the Member State of operation applicable to persons with comparable functions.

²⁰ The amendment re-establishes the wording of the Provision in Art. 3a(4) of the Europol Convention in the version of the third Amending Protocol and additionally suggests putting the burden of informing the National units of the MS participating to the JIT to the entity (MS or Europol) which provided the information.

²¹ The amendment re-establishes the wording of the Provision in Art. 3a(5) of the Europol Convention in the version of the third Amending Protocol.

Article 7
Requests made by Europol to initiate criminal investigations

1. Member States shall deal with any request from Europol to initiate, conduct or coordinate investigations in specific cases and shall give such requests due consideration. ***Europol shall be informed*** ~~They shall inform Europol~~ whether the requested investigation will be initiated.²²
2. If the competent authorities of the Member State decide not to comply with a request from Europol, they shall inform Europol of their decision and of the reasons for it unless they are unable to give their reasons because:
 - (a) to do so would harm essential national security interests; or
 - (b) to do so would jeopardise the success of investigations under way or the safety of individuals.
3. Replies to requests by Europol to initiate, conduct or coordinate investigations in specific cases as well as information to Europol about the results of investigations shall be forwarded ~~by~~ ***through*** the competent authorities in the Member States in accordance with the rules laid down in this Decision and the relevant national legislation.²³ ***Europol shall in particular, when making a request to initiate criminal investigations, inform Eurojust thereof.***²⁴

Article 8
National units

1. Each Member State shall establish or designate a national unit to carry out the tasks set out in this Article. ~~One official shall be appointed in each Member State as the Head of the national unit.~~²⁵

²² The amendment re-establishes the wording of the Provision in Art. 3b(1) of the Europol Convention in the version of the third Amending Protocol. However for reasons of legal clarity “should” has to be replaced by “shall”.

²³ The amendment re-establishes the wording of the Provision in Art. 3b(3) of the Europol Convention in the version of the third Amending Protocol.

²⁴ This addition used to be part of Art. 22(4) of the Commission’s draft, and in accordance with the MS’ general opinion should be integrated into Art. 7 where it belongs to from a systematic point of view.

²⁵ This provision interferes with the MS’ powers of organisation and should hence be deleted.

2. The national unit shall be the **only** liaison body between Europol and the competent national authorities. However, Member States may allow direct contacts between designated competent authorities and Europol subject to conditions determined by the Member State in question, ~~which may include~~ **including** prior involvement of the national unit.

The national unit shall at the same time receive from Europol any information exchanged in the course of direct contacts between Europol and designated competent authorities. Relationships between the national unit and the competent authorities shall be governed by national law, and in particular, the relevant national constitutional requirements²⁶

3. Member States shall take the necessary measures to ensure that the national units are able to fulfil their tasks and, in particular, have access to relevant national data.
4. The national units shall:
- (a) supply Europol on their own initiative with the information and intelligence necessary for it to carry out its tasks;
 - (b) respond to Europol's requests for information, intelligence and advice;
 - (c) keep information and intelligence up to date;
 - (d) evaluate information and intelligence in accordance with national law for the competent authorities and transmit this material to them;
 - (e) issue requests for advice, information, intelligence and analysis to Europol;
 - (f) supply Europol with information for storage in its databases;
 - (g) ensure compliance with the law in every exchange of information between themselves and Europol.
5. Without prejudice to the exercise of the responsibilities incumbent upon Member States with regard to the maintenance of law and order and the safeguarding of internal security, a national unit shall not be obliged in a particular case to supply information and intelligence if this would mean:
- (a)harming essential national security interests; or²⁷***
- (b) jeopardizing the success of a current investigation or the safety of individuals;
 - (c) disclosing information pertaining to organizations or specific intelligence activities in the field of State security.

²⁶ Adaptation of the provision to Art. 4(2) of the Europol Convention in the version of the third Amending Protocol.

²⁷ Adaptation of the provision to Art. 4(5) of the Europol Convention in the version of the third Amending Protocol.

6. The costs incurred by the national units for communications with Europol shall be borne by the Member States and, apart from the costs of connection, shall not be charged to Europol.
7. ***Representatives*** of the national units shall meet on a regular basis to assist Europol ***on operational matters***, at their own motion or at the request of the ***Management Board or the Director***.²⁸ ***The meetings shall be chaired by the representative of one Member State elected for a period of two years by its peers At least twice a year, participants to the meetings shall be senior officials in a position to commit their national authorities on operational matters.***²⁹

Article 9
Liaison officers

1. Each national unit shall second at least one liaison officer to Europol. Except as otherwise stipulated in specific provisions of this Decision, liaison officers shall be subject to the national law of the seconding Member State.
2. ***The liaison officers shall be instructed by their national units to represent the interests of the latter within Europol in accordance with the national law of the seconding Member State and in compliance with the provisions applicable to the administration of Europol.***³⁰
3. Without prejudice to Article 8(4) and (5), the liaison officers shall:
 - (a) provide Europol with information from the seconding national unit;
 - (b) forward information from Europol to the seconding national unit;
 - (c) cooperate with the Europol officials by providing information and giving advice; and
 - (d) ***assist in the*** exchange of information from their national units with the liaison officers of other Member States ***in accordance with the national law.***³¹

The bilateral exchanges provided for in point (d) of the first subparagraph may also cover crimes outside of the competence of Europol, as far as allowed under national law.

3. Article 34 shall apply *mutatis mutandis* to the activity of the liaison officers.

²⁸ At the request of numerous MS, the Management Board should be mentioned before the Director. If necessary, specific reasons for which the Director may request a meeting should be added at a later date.

²⁹ The amendment shall strengthen the support of the HENUs to the MB and ensure that the participants of the meetings are, at least twice a year, in a position to commit their national authorities on operational matters concerning Europol.

³⁰ According to general opinion, the provision of Art. 5(2) of the Europol Convention should be maintained.

³¹ The text should be brought in line with Art. 5(4) of the Europol Convention.

4. The rights and obligations of liaison officers in relation to Europol shall be determined by the Management Board.
 5. Liaison officers shall enjoy the privileges and immunities necessary for the performance of their tasks in accordance with Article 50(4).
 6. Europol shall ensure that Liaison Officers are fully informed about and associated with all of its activities, as far as compatible with their position.
 7. Europol shall provide Member States free of charge with the necessary premises in the Europol building *and adequate support for the fulfilment* of ~~for~~ the activities of their liaison officers. All other costs which arise in connection with the secondment of liaison officers shall be borne by the seconding Member State, including the costs of equipment for liaison officers, to the extent that the Management Board does not recommend otherwise in a specific case when drawing up the budget of Europol.³²
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³² A number of MS pointed out that according to current practice, liaison officers receive greater support and that the provision should take this practice into account.