



The powers given to the European Parliament under the Convention as minimal, it will simply receive an annual report. It will only be consulted if there are amendments to the Convention but as the Council of Ministers is empowered to extend the list of crimes covered by Europol indefinitely this is unlikely to occur before any future major revision (ie: giving Europol operational powers of arrest).

### Defining "organised crime"

No definition of "organised crime" is given in the Convention. The Meijers Committee (Utrecht, Netherlands) told a House of Lords inquiry into Europol that: "A member state might have to provide information about behaviour which under its own law was not criminal". The "list of crimes is arbitrary", they said, and argued for an objective standard (*Europol*, House of Lords, p12). The report by House of Lords on Europol notes that "crimes" appear on the list: "not because they are the most serious offences but because they are particularly transnational in character and therefore require a transnational response" (*Europol*, House of Lords, p26).

The UK Home Office said in evidence to the House of Lords inquiry that: "As in other European countries, our knowledge of the nature and scale of organised crime... is at present largely descriptive." Criminal statistics in the UK, like in a number of other EU countries, are collected by offence and as there is "no offence of committing an act of organised criminal activity.. it is not possible to identify amongst recorded offences those which result from organised crime". What appears to be happening is that recorded crimes are being re-assigned to this category on an ad hoc basis by EU police forces.

Even "suspected" organised criminals have rights. Dr Neil Walker, of Edinburgh University, took up this point in written evidence to the House of Lords inquiry. The groups to be targeted by Europol - drug traffickers, money launderers, clandestine immigrant networks - are unlikely to get sympathy from the public: "it is particularly important that a package of accountability measures is developed which is vigilant..."

### Data protection

When police agencies are given powers to hold information (and intelligence) on citizens an area of concern is the right to find out what is being held and the right to have incorrect information changed or deleted. The provisions on data protection in the Convention are highly complex as they have to cover two different existing sets of data protection laws in EU member states (see *Chapter 3*).

Among the concerns on the data protection provisions are that: 1) Europol only has to "take into account" the Council of Europe Convention 1981 (not should "comply with"); 2) The Joint Supervisory Body, to be set up to oversee data protection, will have no powers of enforcement; 3) data can be included on the computer bases from "third countries and third bodies" on which the Meijers Committee argued: "Since Europol could store data received from non-Member States or through circuitous channels, there were serious risks of inaccuracy, and the right to information might well be illusory" (*Europol*, House of Lords, p17). Moreover, if equivalent standards of data protection were expected of states or bodies putting in or receiving information this would exclude a large part of the world; 4) The UK Data

Protection Registrar says that to allow refusal of a right of access request on the grounds it could affect "the proper performance of Europol's tasks" was far too wide.

### Ratification and Regulations

All parliaments in the EU member states have to ratify the Convention, which they have no power to amend in any way, before it can come into operation. As there is already a delay because of the dispute over the role of the European Court of Justice it is expected this process will take at least two years (the Dublin Convention signed in June 1990 will only complete its ratification process in 1996). Moreover, the Europol Drugs Unit, which is already working on setting up the computer systems, says in its latest report that the "Post-Convention Information System" will not be ready for two years plus the time it will take for member states to link-up.

There are in addition some 19 sets of Regulations or rules still to be adopted (see p 31). The House of Lords report on Europol said it would expect that the "important provisions which the Council must adopt" before the entry into force of the Convention "should also be made available in draft to national parliaments" but certainly in the UK these are not to be formally part of the parliamentary ratification process.

One of the regulations currently being discussed by the Council of Justice and Home Affairs Ministers covers data files in the Europol computer system. Analysis files are to include information classified as "not very reliable" (see p33).

In the UK the Convention will probably be ratified without debate. Under the archaic "Ponsonby rules" the Convention will be "laid" before parliament by listing it in the daily Order Paper and if no MP objects it can be formally ratified by the UK state 21 days later. Arthur Ponsonby, an Under-Secretary of State at the Foreign Office in the Labour government of 1924. He gave an undertaking, during the 2nd reading of the Treaty of Peace (Turkey) Bill on 1 April 1924, that the House of Commons would in future be informed of all treaties and agreements and that they would be "laid" before the House for 21 days. This minor concession to parliamentary accountability - in an area where the government exercises the royal prerogative on behalf of the monarch - remains the constitutional position to this day.

Most other national legislatures have written constitutions giving parliaments formal powers to ratifying treaties and agreements. Parliament will only discuss the issue if enough MPs are able to get a debate inserted in the agreed parliamentary timetables of the frontbenches.

As this pamphlet goes to the printers it is expected that the government will publish the Convention in early December and it will then be "laid" before parliament. It is therefore entirely possible that the UK will have ratified, without debate, the Europol Convention *before* the question of the role of the European Court of Justice has been resolved.

### Policing Europe

The different perspectives on the Convention can be summarised as follows: 1. There is a serious and growing problem posed by international organised crime and Europol is essential. The creation of Europol also demonstrates that the EU can respond effectively in furthering cooperation on law and order. 2. Europol is essential to combat the real threat by international organised

crime but the draft Convention should have been put before the European Parliament so that its views could be taken into account. It was drawn up in secret and there was no democratic input. 3. There *may* be a real threat from international organised crime but nobody really knows its extent. If there is a problem Europol's role should be strictly limited to a common definition of "serious organised crime". The draft Convention should have been published so that a proper, open, democratic debate could have taken place on its provisions. There is little doubt that if the Convention had been published before it was signed by 15 EU governments the resultant public debate could have led to a significantly different Convention - where concerns for the rights of citizens, the rule of law, and democratic accountability were safeguarded.

The Europol Convention cannot be viewed in isolation. It raises a number of issues that will re-occur in other planned EU-wide conventions - data protection, the role of the European Court of Justice, powers over the citizens (see footnote \*). Furthermore, Europol is one of a number of inter-linking EU-wide computer databases being set up which, once created, will potentially impinge on the rights of a whole range of people for the foreseeable future. These include "suspected" criminals, "suspected" public order or security threats, "suspected" illegal migrants and migrants to be excluded from entering the EU.

The Schengen Information System (SIS), which currently covers seven EU states and already holds 10,000,000 records (September 1995), is to become the European Information System (EIS), covering all 15 states (when the External Borders Convention is signed). Europol and the EIS will work in tandem. Europol will deal with "organised crime" - taking in intelligence from non-EU bodies such as the FBI and the US Drug Enforcement Agency - the EIS with "low-level" crime, public order, security threats and migrants.

(\*) *The other Conventions are: "Simplified extradition", the Customs Information System, Community's financial interests already signed by the 15 governments. In the pipeline are those on: the crossing of external borders, the European Information System and extradition between EU member states (to cover "involuntary" extradition).*

## Chapter 2

# Europol Drugs Unit

In January 1993 an embryonic "Europol" office and staff was set up in Strasbourg (on the same site as the Schengen Information System, SIS). A 15-strong working party of police officers was charged with the creation of the Europol Drugs Unit (EDU) reporting to the Ad Hoc Group on Europol and the Trevi 92 working group (under the old *ad hoc* structures prior to the K4 Committee taking over in November 1993).

### The Ministerial Agreement - Copenhagen, 2 June 1993 - and Joint Action - March 1995

At the meeting of Trevi Ministers in Copenhagen on 2 June 1993 they signed a "Ministerial Agreement" setting up the EDU (this did not require ratification by parliaments of member states although it required expenditure on their part). The Ministerial Agreement defined the EDU's tasks as dealing with drug trafficking. This "Agreement" was superseded by the "Joint Action" signed on 10 March 1995 - this governs the work of the EDU which will remain in place until the Europol Convention is ratified by all 15 national parliaments. There was only one significant change between the "Agreement" and the "Joint Action" - the addition of three new roles - see point 2 below. The "Joint Action" is now in force and its principle provisions are:

1. Each member state to contribute one or more "liaison officers" to the EDU (para.1).
2. The EDU is a "*non-operational* team for the exchange and analysis of intelligence" (italics added) in relation to:
  - (a) illicit drug trafficking;
  - (b) illicit trafficking in radioactive and nuclear substances;
  - (c) crimes involving clandestine immigration networks;
  - (d) illicit vehicle trafficking (Article 2.2)"together with the criminal organisations involved and associated money-laundering activities."
3. In conformity with each member states national laws the EDU will perform the following tasks:
  - (a) the exchange "of information (including personal information)" on criminal activities set out in (Article 2.2);
  - (b) the preparation of "general situation reports and analyses of criminal activities on the basis of non-personal information supplied by Member States or from other sources." (Article 2.3);
4. Liaison officers are to have "access to all criminal information and intelligence of their respective Member States" and this is to be channelled through "one central authority" in each state (eg: National Criminal Intelligence Service, NCIS, in the UK) (Article 3);
5. Data protection is provided for on the basis of each Member States national laws to which liaison officers have to adhere; they are empowered to pass information to other liaison officers (Article 4.1). This is taken to cover specific cases.
6. "The liaison officers shall not transmit any personal information to States other than Members States or to any international organisation" (Article 4.2).
7. "no personal information shall be stored centrally by the Unit, whether automatically or otherwise", and national data protection authorities are to ensure compliance under Article 4.
8. The Council of Justice and Home Affairs Ministers is empowered to appoint the top staff: a Coordinator, two Assistant Coordinators and two other members (see below) (Article 5).

9. "General oversight" (not accountability) is through the Council of Justice and Home Affairs Ministers to whom the Coordinator makes a report each six months (Article 6).
10. The cost is paid for by each Member State according to a recognised formula for apportioning costs (Article 7). The EDU is financed by individual Member States not out of the European Community budget.

### Europol HQ opens in Hague - 16 February 1994

At a special EC Summit at the end of October 1993 it was decided that the permanent headquarters of Europol would be in the Hague, the Netherlands (at: Raamweg 47, 2596 HN, the Hague, Netherlands). The new offices were formally opened by the Dutch Minister of Justice, Mr Ernst Hirsch Ballin, on 16 February 1994.

Its initial staff was 18, four analysts, five information officers and nine administrative staff. Mr Jurgen Storbeck (Germany) was appointed by the Council of Ministers as the Director of the EDU in June 1994 and at the following meeting on 30 November 1994 they agreed on two Deputy Coordinators, Mr Willy Bruggemann (Belgium) and Mr Georges Rauch (Luxembourg) and two Assistant Deputy Coordinators, MM Emanuele Marotta (Italy) and Mr David Valls-Russell (UK). Its budget for 1995 was 3.7 million ECUs (just over £3 million).

In July 1994 police, customs, and security officials from Sweden, Finland and Austria started to meet with EDU staff and to take part in the Working Party on Europol under the K4 Committee structure (the three countries did not formally become part of the EU until 1 January 1995).

The meeting of the Council of Justice and Home Affairs Ministers on 30 November 1994 marked the end of the German Presidency without agreement on the draft text of the Europol Convention (exacerbated by late objections from France).

There was also a growing awareness that even when they did eventually sign the Convention it still had to be ratified by the now 15 national parliaments which could take several years (the Dublin Convention signed in June 1990 still awaits ratification by all EU parliaments). Under criticism for failing to agree any new initiatives the German Presidency hastily produced a "Meeting Document" on the afternoon of 30 November calling for an extension of the EDU's role "on a step-by-step basis" through a "Joint Action" to cover "motor vehicle crime, nuclear crime and illegal immigrant smuggling". The Ministers did not agree to the proposal but the Prime Ministers meeting in Essen on 9-10 December 1994 did.

The "Joint Action", replacing the "Ministerial Agreement", was signed at the Council of Justice and Home Affairs Ministers on 10 March 1995. At a stroke the role of the EDU was extended from one main role to four without any reference to the European or national parliaments. It was a move described by Mr Jurgen Storbeck, the EDU Director, in a talk given in Bonn in early December 1994 as: "a legally and politically relatively simple extension of the ministerial agreement".

The EDU also played an active role in the drafting of the Europol Convention via Working Group on Europol under the K4 Committee structure.

### Reports for 1994 and 1995, work programme for 1995

The numbers of requests for information made to the EDU by police forces in the EU rose from 146 in the first half of 1994 to 449 in the second (a total of 595 for 1994) and in the first six months of 1995 there were 660. The number of requests made by Germany was up from 16 in the first half of 1994 to 104 in the second and 189 in the first six months of 1995, the UK from 3 to 62 and 112 in the first half of 1995, and Portugal from 3 to 22 and 61 in the first half of 1995 (see below for responses).

The EDU report for the first six months of 1995 includes the following points of interest: 1) the EDU is "trying to harmonise" its activities with outside bodies such as Interpol, The World Customs Organisation and the EU's Centre for Information, Discussion and Exchange on the crossing of frontiers and immigration (CIREFI) and 2) establishing direct access to national criminal databases by EDU liaison officers (currently only those of Belgium, Germany and Finland are linked). The EDU currently has 83 staff.

### Concerns: the EDU's role until the full Convention is ratified

1. Given the ease with which the Council of Ministers simply extended the EDU's roles in December 1994 there must be some concern that: **the EDU's roles will be further extended without any parliamentary agreement or accountability.**

2. That **the fine line between intelligence gathering and "operational" intervention will be breached.** The EDU has already "coordinated several controlled deliveries of drugs right across Europe" (Storbeck, Bonn speech). The report on the activities of the EDU in the first six months of 1995 clearly illustrates this question. Describing a typical situation in the 44 operations "coordinated" by the EDU it says liaison officers effectively run the one part of an operation when it involves several EU states including ensuring that "the competent observation team takes over the surveillance activities as soon as the target(s) cross the border". This does not appear to fall within their remit as set out in the Joint Action on the EDU.

3. The EDU might seek **to exert undue pressure on the legal processes of member states** where they impede an "operation" the EDU is involved in. The EDU report for the first six months of this year says:

"It is clear that in those Member States where the judiciary have a substantial impact on the way investigations are conducted there is room for an improvement in cooperation in line with the third pillar philosophy."

4. At the Essen Summit meeting in December 1994, ending the German Presidency on the EU, it was agreed that there should be cooperation with the countries of central and eastern Europe (CEEC) to fight "all forms of organised crime" covering the following areas: illicit drug trade, theft and illegal trade in radioactive and nuclear waste, traffic in human beings, illegal immigration networks, and the illegal transfer of motor vehicles.

These are precisely the same roles it had agreed that the EDU should be given at the same Essen Summit. The roles for cooperation with the CEEC are based on the "Berlin Declaration", agreed on 8 September 1994. The Declaration sets out objectives seemingly the same as those set for the EDU: the

"exchange of liaison officers and experts", "cooperation with regard to "controlled deliveries" ", making "use of EU Member States' information on missing motor vehicles".

**The concern must be that the EDU will step outside its constitutional limits over the next three to four years before Europol comes into effect. The EDU is precluded from exchanging information on individuals with non-EU bodies.**

4. The data protection issue: The first report from the EDU, on its activities between 1 January to 30 June 1993, contained a breakdown of the requests received for information and the number of responses from other EU NCIS's. During this period 146 requests were received which received 402 responses - that is, 2.75 responses to every request. However, if the individual country figures are looked at a different picture emerges. Belgium made 6 requests with 40 responses (6.66 responses per request); Greece: 9 requests bringing 35 responses (3.88); Luxembourg: 8 requests with 55 responses (6.87); Netherlands: 10 requests with 85 responses (8.5); Spain: 6 requests with 42 responses (7); and the UK: 3 requests with 25 responses (8.33). Taking these six countries together they made 42 requests which brought 282 responses giving an average response rate of 6.7 to each request.

The overall figures for the first half of 1995 showed 660 requests bringing 1,403 responses. However within these figures a similar pattern also emerged. One request from Sweden brought 23 responses and 1 from Finland 18 responses. While 6 requests from Denmark brought 62 responses and 6 from Luxembourg 65 responses. Netherlands made 33 requests with 280 responses (8.48) and 10 from Spain showed 163 responses.

**This highlights the problems an individual could face, both under the EDU and the Europol Convention, in establishing where the information and/or intelligence concerning them originated.** Moreover it should be borne in mind that under the Europol Convention additional information can be gathered from a whole range of third parties as well as EU member states.

## Chapter 3

# Analysis of the provisions

This chapter looks at the provisions in the Convention adopted on 26 July 1995. Where important changes were made between the previous drafts (November 1993, October 1993 and November 1994) and the final text these are noted in *italics*.

### Objectives and tasks (Articles 1-3)

The objectives of Europol are:

"preventing and combating terrorism, unlawful drug trafficking and other serious forms of international crime where there are

factual indications that an organised structure is involved..." (Art 2.1)

The reference to "terrorism" while it was included in the Maastricht Treaty (Article K.1.9) was not included in the first drafts of the Convention. It was added in April 1995 at the insistence of the Spanish government who argued that if Europol was to justify its existence then surely it had to deal with the question of terrorism which affected a number of EU states. At the Council of Ministers meeting in March it was agreed that "within two years at the latest" of the Convention coming into force Europol will deal with "terrorist activities".

Several governments want terrorism to be dealt with by the Police Working Group on Terrorism and the Trevi Secure Fax Network (TSFN) and encrypted e-mail links - thus keeping it outside Europol's structure.

The present roles of the Europol Drugs Unit (EDU) are noted: "unlawful drug trafficking, trafficking in nuclear and radioactive substances, illegal immigrant smuggling, trade in human beings and motor vehicle crime" (Art 2.2)

To these are added 18 other "forms of international crime" which range from murder to organised robbery, kidnapping to arms trafficking (see Annex attached to the Convention). The list includes "racism and xenophobia", "corruption" and "environmental crime" whose perpetrators may not originate in "organised crime" but rather with governments, state agencies and officials.

Europol will also be empowered to deal with any related money-laundering activities and "related criminal offences" connected with the list of 18 crimes and 5 roles assigned to the EDU.

The Convention empowers the Council of Justice and Home Affairs Ministers to expand the list of crimes to be covered (see Article 43.3).

If the forms of crime to be tackled are, in the main, obvious ones it is the breadth of "suspicion" allowed which must be a cause for concern. It empowers Europol to gather, hold and distribute intelligence on what Article 3.2 defines as "related criminal offences":

criminal offences committed in order *to procure the means for perpetrating acts* within the sphere of competence of Europol;

criminal offences committed in order *to facilitate or carry out acts* within the sphere of competence of Europol;

criminal offences committed *to ensure the impunity* [to exempt from punishment] of acts within the sphere of competence of Europol" (*italics added*).

Whether or not a crime can be defined as a "related criminal offence" will depend on the varying definitions of the different police forces. For example, the UK could include conspiracy charges where there only has to be a belief that a person has conspired with persons unknown. The breadth of each "crime" is

further extended in later Articles (Arts 8 and 10).

It should be noted that: 1) Nowhere is a definition of "organised crime" provided in the Convention. 2) The Council has made great play on the point that it is not an operational body, yet nowhere is the line between intelligence-gathering and dissemination and "operations" defined. Article 3.2.1 does refer to an additional task for Europol of developing "specialist knowledge of the investigative procedures of the competent authorities in the Members States and to provide advice on investigations".

*The list of forms of crime has grown from 13 to 18 since November 1993. The concept of "related" offences in Article 2.3 was added between November 1994 and July 1995.*

### **National units and Liaison officers (Articles 4 & 5)**

Each Member State has already designated a "National Unit" and "Liaison Officers" to work the EDU and their role is formalised in the Convention. The National Units (the National Criminal Intelligence Service, NCIS, in the case of the UK) are to supply Europol with "information and intelligence", to respond to requests for information, and ensure compliance with national laws. The Units are not "obliged" to supply information which would harm "essential national security interests" or that related to national "State security" organisations or their activities (Art 4.5).

Each national unit will second Liaison officers who will provide Europol with "information from the seconding unit"; forward "information from Europol to the seconding unit" and cooperate "as regards analysis of information" (Article 5.3). In addition liaison officers "shall assist in the exchange of information" and in the "coordination of the resulting measures" - a guarded reference to operations such as "controlled drug deliveries" (Article 5.4).

### **Computerised system of collected information Article 6**

This Article was the subject of much discussion under the German and French Presidencies (July 1994-June 1995).

It defines three separate computer databases with different levels of access by Liaison officers. First there is the "information system" (set out in Article 7) of the information put in by each National Unit accessible by National Units' Liaison officers and all Europol staff; second, "work files" (Article 10) or rather the analysis files which bring together intelligence from different sources together with analytical assessment - access to these is to be restricted (see Article 10). Finally, an "index system" (Article 11) containing "certain particulars from the analysis files".

Article 6.2 says that this computerised system operated by Europol "must under no circumstances be linked to other automated processing systems".

*Since the draft of 26 April 1995, the following has been added: "except for the automated processing systems of national units"*

*(the EDU is already creating links to national databases).*

### **Information system, work files and index Articles 7 - 11**

These Articles define the three levels of the Europol computer system (data files, analysis files and the index system).

Article 7 contains the first mention of the system holding data supplied by "third States and bodies" (see later).

Article 8 defines the contents of the "information system". It may be used to hold, modify and utilise "only the data necessary for the performance of Europol's tasks", with the "exception of data concerning related criminal offences" (Article 3.2). In other words it can store data on "related criminal offences" even though they are not necessarily defined as "Europol's tasks".

The data, it says, shall relate to offences for which Europol is competent under Article 2:

"persons who... are *suspected* of having committed or having taken part in a criminal offence... or who have been convicted..." (Article 8.1.1; italics added) and

"persons who there are serious grounds... *for believing will* commit criminal offences..." (Art 8.1.2; italics added)

The information held on an individual can, under Article 8.2, in addition to name, date and place of birth, nationality and sex, include:

"where necessary, other characteristics likely to assist in identification, including any specific objective physical characteristics not subject to change" (Art 8.2.5)

The most obvious "characteristic" is a person's race.

*This is spelt out explicitly in the draft regulation on the data files which says information on a person's race (and politics) can be held "if necessary" (see p 33).*

Article 8.3 also allows data to be held on "alleged crimes", the "means [methods] which were or may be used to commit a crime", and "suspected membership of a criminal organisation".

Article 8.4 says that where information concerns "related criminal offences" (as in Art 2.3. 2nd para) this should be "marked" so that data can be exchanged by national units and Europol on the related offences. In other words, Europol is to store and exchange data not just on the list of crimes but on "related offences" in their own right.

Article 10 defines the top-level part of the Europol computer system - the "work files for the purpose of analysis". The Article says that data can be held not just on a person "suspected" of having committed or taken part in a crime but also on:

- a. witnesses
- b. victims and *potential* victims
- c. "contacts and associates"

d. "persons who can provide information on..", that is, informers or infiltrated agents

The Article says that data:

"listed in the *first* sentence of Article 6 of the Council of Europe Convention of 28 January 1981 with regard to Automatic Processing of Personal Data *shall not be permitted unless strictly necessary* for the purposes of the file concerned and unless such data supplement other personal data already entered in that file" (Article 10.1; italics added).

The provision goes on to say that it shall be "prohibited to select a particular group of persons solely on the basis of the data listed" in the above Council of Europe Convention.

*Article 6 of the 1981 Council of Europe Convention of 28 January 1981 referred to above says in its first sentence: "Personal data revealing racial origin, political opinions or religious or other beliefs, as well as personal data concerning health or sexual life, may not be processed automatically unless domestic law provides appropriate safeguards". It is interesting to note the exclusion of the second sentence of Article 6 which says: "The same shall apply to personal data relating to criminal convictions".*

Access to the analysis or work files is limited to analysts, liaison officers (or experts) from the country supplying the information or from another EU state whose designated liaison officer "assert(s)" a need to be involved (Art 10.6).

Article 10.4 allows Europol to request information from a whole range of bodies:

- a. the European Communities, eg: the European Commission;
- b. "other bodies governed by public law established in the framework of the European Union", eg: the Schengen Information System (SIS) or the Customs Information System;
- c. bodies based on an agreement between two or more Member states of the European union;
- d. "third States", eg: the USA
- e. "international organisations and their subordinate bodies.."
- f. "other bodies governed by public law which are based on an agreement between two or more States", ie: any relevant intelligence-gathering body in the world;
- g. INTERPOL.

The same clause also allows Europol to:

"accept information provided by those various bodies *on their own initiative*."(italics added).

In short, a file may be opened by Europol on an EU citizen at the behest of a whole host of countries and organisations. The Council, under the Convention, empowers itself to agree the rules by which this data should be exchanged.

Europol is to be allowed where it is "entitled under other Conventions to gain computerised access to data from other information systems". This seems to be in contradiction to Article 6.2.

Access to the Index System is set out in Article 11, namely, Europol officials and liaison officers.

Article 13 sets out a duty to notify national units and their liaison officers of "any information concerning their Member State" concerning the objectives in Article 2. But in addition this Article states:

"Information and intelligence concerning *other serious criminal offences*, of which Europol becomes aware in the course of its duties, may also be communicated." (italics added)

### **Data protection Articles 14-18**

The standard of data protection to be given at national level is set out in Article 14. This says it should:

"at least correspond to the standard resulting from the implementation of the principles of the Council of Europe Convention of 28 January 1981, and in doing so, shall *take account of* Recommendation No R(87) 15 of the Committee of Ministers of the Council of Europe of 17 September 1987 concerning the use of personal data in the police sector" (italics added)

*In the April draft it is noted that the Belgian delegation wanted to include "non-automatic processing of personal data", that is, manual files. The note says this idea created "problems" for 8 EU states - Spain, the UK, Italy, France, Ireland, Luxembourg, Sweden and Denmark - who entered "substantive reservations" (Austria entered a scrutiny reserve). The final draft partially met the Belgian case by saying that Europol would observe these principles (in quote above) for: "non-automated data held in the form of data files, ie: any structured set of personal data accessible in accordance with the specified criteria".*

The legality of the collection of data held lies either with the Member State which puts in the information, or with Europol in the case of data from "third parties" and that included in Europol analytical files.

The data has to be stored in a way that allows Europol to establish which Member State or third party gave the information or whether it was the result of an analysis by Europol itself (Article 15.3). This is an important provision for an individual seeking redress.

The "Rules on the use of data" (Article 17) limits the use of the data held to "prevent and combat crimes falling within the competence of Europol" and then adds "and to combat other serious forms of crime" - again leaving the door open (see Article 13 above).

*The October 1994 draft included a reference in this Article to data being accessible for intelligence and security purposes. This has been now been deleted. But Article 2.4 refers to "competent authorities" which can liaise with national units as meaning "all public bodies existing in the Member States which are responsible under national law for preventing and combatting*

*criminal offences" - which in the case of the UK will include MI5 (the Security Service).*

The "Communication of data to third states and third bodies" set out in Article 18 falls below the standards set for Europol itself. For example, Europol is to decide that "an adequate level of data protection is ensured in the State or that body", no mention is made of the standards laid down in the Council of Europe Recommendations.

Third states or bodies will be required to give "an undertaking that the data will only be used for the purpose for which it was communicated" (Article 18.5). However, the same paragraph then adds that this shall not apply "to the communication of personal data required for a Europol inquiry" which presumably could have a wider purpose.

### **Right of access**

#### **Article 19**

One of the last Articles in the Convention to be agreed is that on "Right of access".

Article 19 starts out positively, then progressively adds reservation after reservation. An individual can "exercise his [sic] right of access to data", free of charge. An application must be made to the "national competent authority" (in the UK the Data Protection Registrar) and who will refer it to Europol which will reply directly to the individual; such requests must be dealt with within three months.

Article 19.3 implies that an individual can apply for access to the data held on them not just in their home Member States but in *any* Member State, that is, a UK citizen could apply to the German Data Protection authority.

Where the Member State has data access laws (and Italy and Greece do not) the request can be turned down:

"if such a refusal is necessary to: 1) enable Europol to fulfil its duties properly; 2) protect security and public order in the Member State or to prevent crime; 3) protect the rights and freedoms of third parties"

Further reservations then apply to each of the three levels of the Europol computer system: a) where it relates to the "information system" (Article 8) no data can be given unless the Member State which entered the data and the Member States which the data concerned agree and may refuse; b) where data has been entered by Europol, ie: from a third party, the Member State affected by the data has to agree and may refuse; c) for data in the "work files" (Article 10) there has to be a consensus among Europol, the Member States participating in the analysis and the Member States affected. If there is not a consensus then:

"Europol shall notify the person that it has carried out the checks, without giving any information which might reveal to him [sic] whether or not he is known."

Article 19 then sets out the provisions for providing responses to requests from individuals for data held on them.

Where the national law makes no provision for: a) a communication concerning data or b) in the case of a simple request for a check (a check meaning whether or not information is held on an individual as distinct from a request for access to the information held on them) the response will be in the same uninformative way set out above "without giving any information which might..." (Article 19.5). Individuals can appeal to the Joint Supervisory Body, a committee of data protection officials from each EU state (see Article 24) where they are not satisfied with the response on access to data or a request for a check.

The provisions governing appeals are however more complicated. The first set of rules cover requests for access to copies of the data held or "a communication concerning data" in the official parlance, the second to "checking the data", or checking that the data held is accurate.

In the first area where *the data was entered by a Member State* the Joint Supervisory Body has to take into account the national law of the Member State "in which the application was made" and must consult the national data protection authority (or judicial body) in the Member State which was the source of the data.

Where the data was entered by Europol the Joint Supervisory Board cannot rule in favour of an appeal unless two-thirds of its members support it. If there is no majority that now familiar formula appears again, "without giving any information which might...."

In the second area only that familiar "without giving any information which might...." applies whoever put the information in.

It appears that individuals wanting to appeal should opt for requesting copies of the information held on them rather than a simple "check".

These provisions also apply to "non-automated data".

This Article is silent on data acquired from third bodies or third countries.

*This article underwent substantial revision between the draft versions of 27 October and 22 November 1994 and by the 26 April version the section was blank.*

### **Deletion and correction and review of data files**

#### **Articles 20-22**

Article 20 says that "if it emerges" that data held by Europol is incorrect or contravenes the Convention it shall be corrected or deleted (Article 22 has similar provisions for "paper files").

"Any person shall have the right to ask Europol to correct or delete incorrect data concerning" them - how they find out if "incorrect data" is held is another question (Article 20.4).

Data held is to be reviewed after three years if not before, and may be extended (Article 21).

Readers of the full Convention will at times find themselves referring backwards and forwards to different provisions. Such an instance occurs in Article 21.3. This says data referred to in "point 1 of the first subparagraph of Article 10 (1) may not exceed a total of three years". The said "point 1" says: "persons as referred to in Article 8(1)" [qualified by reference to Articles 2.1, 2.2 and 2.3]. Article 8.1 covers people "suspected of having committed" or where there are serious grounds "for believing [they] will commit...". As if this is not complicated enough Article 21.3, which appears to set a time limit of three years, then sets a quite unique provision: "Each time limit shall begin to run afresh on the date on which an event leading to the storage of data relating to that individual occurs". The term "event" is nowhere defined but appears to refer to *any* significant new input of data on people "suspected".

### **National & Joint Supervisory Bod(ies) Articles 23 & 24**

Each Member State has to designate a "national supervisory body" (Data Protection Authority) to monitor the information put in by that state and shall have access to the "national unit" (National Criminal Intelligence Service, NCIS) and to the "offices and documents of their respective liaison officers at Europol." (Article 23.1)

Again in Article 23.2 there appears to be confirmation of the possibility to apply to the national supervisory body in any Member State to ensure that "the entry or communication of data.. and the consultation of data.. are lawful".

Article 24 sets up an "independent" Joint Supervisory Body comprised of representatives from national supervisory bodies. Like the provisions on right of access its terms of reference sound positive. Europol must "assist" it supplying all the information it requests, giving access to documents and its premises, and must abide by its appeal decisions (Article 24.2). But it cannot order Europol to correct its files or ensure non-violation of the Convention's provisions, it can only "make any complaints it deems necessary to the Director of Europol" (Article 24.5). Nor can it place restrictions on the transfer of data to third states or third bodies. It has no powers of enforcement.

### **The Director, Management Board, Staff etc Article 26 to 31**

Europol "shall have legal personality" and "shall enjoy in each Member State the most extensive legal and contractual capacity available to legal persons under that State's law" (Article 26.1 & 2). It is empowered to "conclude" the "necessary confidentiality agreements" with third States and third bodies (Article 26.3).

The Management Board of Europol will be composed of one representative of each Member State (15), with alternates provided for. These are likely to be officials from Interior Ministries, accompanied by "experts". The European Commission will be allowed to attend meetings, without a vote, unless the Board decides to exclude them (Article 28.23.4). The Chair will be from the Member State holding the Presidency of the Council. It will meet at least twice a year, and adopt

unanimously each year two reports: a report on the past year's activities and one on future activities.

The Director of Europol will be initially appointed for five years (thereafter for four years) (Article 29). The Deputy Director for four years and "second" Deputy Director(s) for an initial three years (thereafter four years).

The Director is given extensive powers over the running of Europol including that of appointing and dismissing all employees (though it should be noted the Director has no direct powers over the appointment of national liaison officers) (Article 30.2).

Europol staff will "not take or seek orders from any government, authority, organisation or person outside Europol" except as provided for (Article 30.1). Those engaged on "sensitive activity" will be subject to "security screening" by their own member states whose conclusions will be binding (Article 31.2).

### **Obligation of discretion and confidentiality (court appearances)**

#### **Article 32**

Article 32 is headed "Obligation of discretion and confidentiality" and starts by setting out that staff (employees and liaison officers) "shall refrain from any action and any expression of opinion which might be harmful to Europol or prejudice its activities" (Article 30.1).

However, its key provision (Article 32.3) covers the appearance in court of employees and liaison officers.

No member of Europol staff can give evidence in court without the permission of the Director of Europol.

The Director, or Management Board, can approach national court officials to:

"adjust the procedures for giving evidence in order to ensure the confidentiality of the information, or, provided that the national law concerned permits, to refuse to make any communication concerning data insofar as is vital for the protection of the interests of Europol or of a Member State."

A liaison officer cannot appear in court without the permission of their Member State.

A Member State from which information originated must be consulted: "the position of that Member State concerning the evidence must be sought before permission is given" [for the liaison officer to appear in court].

Permission to give evidence can be refused if it is "necessary to protect overriding interests of Europol or of a Member State or States that need protection".

### **Informing the European Parliament**

#### **Article 34**

The article on the role of the European Parliament represents a

minimalist position. The parliament is simply to be sent an annual report on Europol's work.

The only marginal concession is that the EP is to be "consulted" if the Convention is amended. The EP was meant to be "consulted" under Article K.6 of the Maastricht Treaty and its "views.. duly taken into consideration" prior to the signing of the Convention. But it was not "consulted", which in this context means officially being sent a copy of the draft Convention in order for it to express a view, it is hard to see what this will mean.

*In the draft Convention of 27 October 1994 the article covering the European Parliament was much more detailed (Article 31) and is one of the most watered down provisions. It included the following additional provisions that spelt out how Article K.6 of the Maastricht Treaty would be applied:*

*"The Presidency shall consult the European Parliament on the principal aspects of Europol's activities, in particular giving the European Parliament the opportunity to express an opinion before important decisions are taken on the implementation of the Convention and before decisions are taken to amend it. The Presidency shall ensure that recommendations of the European Parliament are duly taken into consideration". (Article 31.2)*

*"The Director of Europol shall make a statement within a month to the Presidency of the Council on questions by the European Parliament to the Council regarding Europol's work. It shall be the responsibility of the Presidency of the Council to answer the European Parliament's questions." (Article 31.3)*

*"Where the European Parliament is discussing matters connected with this Convention the representative of the Council present at the sittings may also be assisted by the Director; the Deputy Directors and employees of Europol." (Article 31.4)*

*In the version of the draft Convention dated 22 November 1994 Article 31 (Informing the European Parliament) was followed by a blank page. However "Observations" attached to the 22 November version made clear the division of opinion amongst the governments. A minority thought Article K.6 of the Maastricht Treaty - which is being totally ignored by the Council of Ministers - was "sufficient". The majority wanted to "give concrete form to the duty of consultation under Article K.6". A later version of the Convention dated 26 April 1995 also had a blank page for Article 31.*

### **The budget and audit Article 35 & 36**

As the Convention is an intergovernmental one the cost of running Europol is to be paid for by each of the 15 EU states according to a standard formula of the percentage attributed to each country. The UK government's opposition to the involvement of any EU institutions is compromised in one respect, the Court of Auditors will appoint three members to form the "joint audit committee".

### **Liability for unauthorised or incorrect data processing Article 38 & 39**

This article lays down that each member state, in accordance with its national law, will be liable for "any damage caused to an individual as a result of legal or factual errors in the data stored or processed by Europol" (Article 38.1) and for compensation paid to the individual concerned (Article 38.2).

The only point of access for the individual to legal action is through national court where the "error" occurred:

"Only the Member State in which the event which gave rise to the damage occurred may be the subject of an action for compensation on the part of the injured party, who shall apply to the courts having jurisdiction over the national law of the Member State involved" (Article 38.1).

*Earlier versions of the Convention allowed an individual to take action in their own national courts to claim damages against another Member State.*

The legal meaning of the term "event" may well lead to different interpretation in different national courts. The country in which the "event" originated may not be the country of the complainant which would require legal assistance in the country in question.

The Article is silent if the "event" occurs as a result on information emanating from a third state (a country outside the EU not covered by this Convention) or international organisation where logically Europol itself should be liable.

Legal action against Europol itself which may be responsible for inaccurate information in the analysis files (that is, files created by Europol staff based on the collation of intelligence from different countries or sources) will also be dealt with by national courts. In theory this could lead to an action in a national court against Europol for information which came from a "third state".

To take legal action the individual has to have been given access to the erroneous information in the first place which relates back to Article 19.

### **Settlement of disputes Article 40**

This is the contentious article regarding the settling of disputes between member states over the application or interpretation of the Convention. Fourteen EU governments want disputes which cannot be resolved within the Council's usual procedures to be referred to the European Court of Justice (ECJ), the UK alone does not.

The 14 EU states have declared that they will refer such cases to the ECJ (see Declaration on Article 40.2). At the Cannes Council in June 1995 it was decided that this question must be resolved at the latest by June 1996.

*The title of this Article has been changed from "Judicial control" in all the earlier drafts. The November 1993 (Article 20) draft said that the European Court of Justice would decide disputes over interpretation of the Convention, to determine "disputes regarding the legality of decisions of the Europol Management Board, and failure to fulfil its obligations."*

*The debate over the role of the European Court of Justice, which it was known the UK government opposed, took place between October 1994 and the meeting of the Council of Justice and Home Affairs Ministers in Luxembourg on 20 June 1995. The 27 October version contained provisions for the ECJ to be involved in deciding on questions of interpreting the Convention, disputes with Europol staff, the refusal of Europol's Director to give permission for an officer to appear in court, and for an individual to bring proceedings for infringement of their rights. Just a month later, in the 22 November version, there were four variations for settling disputes on interpreting the Convention, the provision on individual rights of appeal to the ECJ had disappeared, two versions on staff disputes and three versions in relation to refusal to allow a Europol officer to appear in court.*

### **Relations with third states and third bodies**

#### **Article 42**

The Council here empowers itself to draw up and agree the rules governing relations with "third states" and "third bodies".

### **Amendment**

#### **Article 43**

The Council empowers itself to amend the Convention subject to member states' "respective constitutional requirements". Such amendments "enter into force in accordance with Article 45.2." This simply says member states should notify the "Depositary" (the Secretary-General of the European Union) when they have completed "their constitutional requirements". It is perhaps significant or bad drafting that the power to amend the Convention refers to Article 45.2 rather than Article 45.3 which says it will enter into force when the last member state has agreed it.

The Council also empowers itself to "amplify, amend or supplement" the definitions of the "forms of crime" listed in the Annex and to introduce "new definitions of the forms of crime" (Article 43.3). Whether the exercise of this power would constitute an "amendment" on which the European Parliament would be "consulted" (Article 34) is not spelt out.

### **Entry into force**

#### **Article 45**

As an international agreement the first step is for representatives of each state to *sign* the Convention. This is followed by a process of *ratification* by national parliaments.

The Convention enters into force three months after the last of the 15 EU states has completed its ratification process.

The following measures have to be in place before the Convention can be put into effect: 1) the privileges and immunities of liaison officers (Articles 5.7, 41.1, 41.2); 2) rules for data files (Article 10.1); 3) the joint supervisory body adopts its rules of procedure (Article 24.7); 4) staff regulations (Article 30.3); 5) rules of confidentiality (Article 31.1); 6) financial regulation (Article 35.9); 7) the headquarters agreement with the Netherlands government.

Europol will take over from the Europol Drugs Unit its premises and all its files when it starts.

This Article concludes with yet another ambiguous provision. It says that once the "Council has adopted the act", that is the signing of the Convention on 26 July 1995:

"Member states, acting either individually or in common, shall take all preparatory measures under their national law which are necessary for the commencement of Europol activities" (Article 45.6)

The term "under their national law" creates the confusion as it simply refers to states only undertaking measures their national laws let them do.

In simple terms this means that because national parliaments have no power to amend the Convention, only to agree it, the Council is empowering itself to set in place all the elements needed to operate Europol, that is, the various bodies, computer systems and links to national units etc.

### **Declarations and protocols**

Four declarations are attached to the Convention. The first is a declaration by Germany and Austria that there should be "*reasons to suspect*" people on whom a file is opened (Article 8.1), rather than the terms currently included, "suspected" and "believing will commit". The second, also from Germany and Austria, says that they will transmit data on the understanding that the "spirit" of data protection will be applied to "non-automated processing" (ie: hard copy files). The third is the Declaration already referred to concerning the European Court of justice.

The fourth, adopted by the Council unanimously, says Europol should as a "priority" establish relations with agencies in countries with which the EU "have established a structured dialogue" - that is, the countries of central and eastern Europe and, following the Barcelona Euro-Mediterranean Conference with the Maghreb countries.

## **Chapter 4**

# **The Europol Convention**

**BASED ON ARTICLE K.3 OF THE TREATY ON EUROPEAN UNION, ON THE ESTABLISHMENT OF A EUROPEAN POLICE OFFICE (EUROPOL CONVENTION)**

THE HIGH CONTRACTING PARTIES to the present Convention, Member States of the European Union,

REFERRING to the Council act of 26 July 1995;

AWARE of the urgent problems arising from terrorism, unlawful drug trafficking and other serious forms of international crime;

WHEREAS there is a need for progress in solidarity and co-operation between the Member States of the European Union, particularly through an improvement in police cooperation between the Member States;

WHEREAS such progress should enable the protection of security and public order to be further improved;

WHEREAS the establishment of a European Police Office (Europol) was agreed in the Treaty on European Union of 7 February 1992;

IN VIEW of the decision of the European Council of 29 October 1993 that Europol should be established in the Netherlands and have its seat in The Hague;

MINDFUL of the common objective of improving police cooperation in the field of terrorism, unlawful drug trafficking and other serious forms of international crime through a constant, confidential and intensive exchange of information between Europol and Member States' national units;

ON THE UNDERSTANDING that the forms of cooperation laid down in this Convention should not affect other forms of bilateral or multilateral cooperation;

CONVINCED that in the field of police co-operation, particular attention must be paid to the protection of the rights of individuals, and in particular to the protection of their personal data;

WHEREAS the activities of Europol under this Convention are without prejudice to the powers of the European Communities; whereas Europol and the Communities have a mutual interest, in the framework of the European Union, in establishing types of cooperation enabling each of them to perform their respective tasks as effectively as possible,

HAVE AGREED as follows:

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## TITLE I

### ESTABLISHMENT AND TASKS

#### Article 1

##### Establishment

1. The Member States of the European Union, hereinafter referred to as "Member States", hereby establish a European Police Office, hereinafter referred to as "Europol".

2. Europol shall liaise with a single national unit in each Member State, to be established or designated in accordance with Article 4.

#### Article 2

##### Objective

1. The objective of Europol shall be, within the framework of cooperation between the Member States pursuant to Article K.1(9) of the Treaty on European Union, to improve, by means of the measures referred to in this Convention, the effectiveness and cooperation of the competent authorities in the Member States in preventing and combating terrorism, unlawful drug trafficking and other serious forms of international crime where there are factual indications that an organized criminal structure is involved and 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 concerned.

2. In order to achieve progressively the objective mentioned in paragraph 1, Europol shall initially act to prevent and combat unlawful drug trafficking, trafficking in nuclear and radioactive substances, illegal immigrant smuggling, trade in human beings and motor vehicle crime.

Within two years at the latest following the entry into force of this Convention, Europol shall also deal with crimes committed or likely to be committed in the course of terrorist activities against life, limb, personal freedom or property. The Council, acting unanimously in accordance with the procedure laid down in Title VI of the Treaty on European Union, may decide to instruct Europol to deal with such terrorist activities before that period has expired.

The Council, acting unanimously in accordance with the procedure laid down in Title VI of the Treaty on European Union, may decide to instruct Europol to deal with other forms of crime listed in the Annex to this Convention or specific manifestations thereof. Before acting, the Council shall instruct the Management Board to prepare its decision and in particular to set out the budgetary and staffing implications for Europol.

3. Europol's competence as regards a form of crime or specific manifestations thereof shall cover both:

1) illegal money-laundering activities in connection with these forms of crime or specific manifestations thereof;

2) related criminal offences.

The following shall be regarded as related and shall be taken into account in accordance with the procedures set out in Articles 8 and 10:

- criminal offences committed in order to procure the means for perpetrating acts within the sphere of competence of Europol;

- criminal offences committed in order to facilitate or carry out acts within the sphere of competence of Europol;

- criminal offences committed to ensure the impunity of acts within the sphere of competence of Europol.

4. For the purposes of this Convention, "competent authorities" means all public bodies existing in the Member States which are responsible under national law for preventing and combating criminal offences.

5. For the purposes of paragraphs 1 and 2, "unlawful drug trafficking" means the criminal offences listed in Article 3(1) of the United Nations Convention of 20 December 1988 against Illicit Traffic in Narcotic Drugs and Psychotropic Substances and in the provisions amending or replacing that Convention.

#### Article 3

##### Tasks

1. In the framework of its objective pursuant to Article 2(I), Europol shall have the following principal tasks:

1) to facilitate the exchange of information between the Member States;

2) to obtain, collate and analyse information and intelligence;

3) to notify the competent authorities of the Member States without delay via the national units referred to in Article 4 of information concerning them and of any connections identified between criminal offences;

4) to aid investigations in the Member States by forwarding all relevant information to the national units;

5) to maintain a computerized system of collected information containing data in accordance with Articles 8, 10 and 11.

2. In order to improve the cooperation and effectiveness of the competent authorities in the Member States through the national units with a view to fulfilling the objective set out in Article 2(1), Europol shall furthermore have the following additional tasks:

- 1) to develop specialist knowledge of the investigative procedures of the competent authorities in the Member States and to provide advice on investigations;
- 2) to provide strategic intelligence to assist with and promote the efficient and effective use of the resources available at national level for operational activities;
- 3) to prepare general situation reports.

3. In the context of its objective under Article 2(1) Europol may, in addition, in accordance with its staffing and the budgetary resources at its disposal and within the limits set by the Management Board, assist Member States through advice and research in the following areas:

- 1) training of members of their competent authorities;
- 2) organization and equipment of those authorities;
- 3) crime prevention methods;
- 4) technical and forensic police methods and investigative procedures.

#### **Article 4**

##### **National Units**

1. Each Member State shall establish or designate a national unit to carry out the tasks listed in this Article.
2. The national unit shall be the only liaison body between Europol and the competent national authorities. Relationships between the national unit and the competent authorities shall be governed by national law, and, in particular the relevant national constitutional requirements.
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. It shall be the task of the national units to:
  - 1) supply Europol on their own initiative with the information and intelligence necessary for it to carry out its tasks;
  - 2) respond to Europol's requests for information, intelligence and advice;
  - 3) keep information and intelligence up to date;

- 4) evaluate information and intelligence in accordance with national law for the competent authorities and transmit this material to them;
- 5) issue requests for advice, information, intelligence and analysis to Europol;
- 6) supply Europol with information for storage in the computerized system;
- 7) 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 as set out in Article K.2(2) of the Treaty on European Union, a national unit shall not be obliged in a particular case to supply the information and intelligence provided for in paragraph 4, points 1, 2 and 6 and in Articles 7 and 10 if this would mean:

- 1) harming essential national security interests; or
- 2) jeopardizing the success of a current investigation or the safety of individuals;
- 3) involving information pertaining to organizations or specific intelligence activities in the field of State security.

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. The Heads of national units shall meet as necessary to assist Europol by giving advice.

#### **Article 5**

##### **Liaison Officers**

1. Each national unit shall second at least one liaison officer to Europol. The number of liaison officers who may be sent by Member States to Europol shall be laid down by unanimous decision of the Management Board; the decision may be altered at any time by unanimous decision of the Management Board. Except as otherwise stipulated in specific provisions of this Convention, 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.
3. Without prejudice to Article 4(4) and (5), the liaison officers shall, within the framework of the objective laid

down in Article 2(1), assist in the exchange of information between the national units which have seconded them and Europol, in particular by:

- 1) providing Europol with information from the seconding national unit;
- 2) forwarding information from Europol to the seconding national unit; and
- 3) cooperating with the officials of Europol by providing information and giving advice as regards analysis of the information concerning the seconding Member State.

4. At the same time, the liaison officers shall assist in the exchange of information from their national units and the coordination of the resulting measures in accordance with their national law and within the framework of the objective laid down in Article 2(1).

5. To the extent necessary for the performance of the tasks under paragraph 3 above, the liaison officers shall have the right to consult the various files in accordance with the appropriate provisions specified in the relevant Articles.

6. Article 25 shall apply *mutatis mutandis* to the activity of the liaison officers.

7. Without prejudice to the other provisions of this Convention, the rights and obligations of liaison officers in relation to Europol shall be determined unanimously by the Management Board.

8. Liaison officers shall enjoy the privileges and immunities necessary for the performance of their tasks in accordance with Article 41(2).

9. Europol shall provide Member States free of charge with the necessary premises in the Europol building for the activity of their liaison officers. All other costs which arise in connection with seconding liaison officers shall be borne by the seconding Member State; this shall also apply to the costs of equipment for liaison officers, to the extent that the Management Board does not unanimously recommend otherwise in a specific case when drawing up the budget of Europol.

## **Article 6**

### **Computerised system of collected information**

1. Europol shall maintain a computerized system of collected information consisting of the following components:

- 1) an information system as referred to in Article 7 with a restricted and precisely defined content which allows rapid reference to the information available to the Member States and Europol;

- 2) work files as referred to in Article 10 established for variable periods of time for the purposes of analysis and containing comprehensive information and

- 3) an index system containing certain particulars from the analysis files referred to in point 2, in accordance with the arrangements laid down in Article 11.

2. The computerized system of collected information operated by Europol must under no circumstances be linked to other automated processing systems, except for the automated processing systems of the national units.

## **TITLE II**

### **INFORMATION SYSTEM**

#### **Article 7**

##### **Establishment of the information system**

1. In order to perform its tasks, Europol shall establish and maintain a computerized information system. The information system, into which Member States, represented by their national units and liaison officers, may directly input data in compliance with their national procedures, and into which Europol may directly input data supplied by third States and third bodies and analysis data, shall be directly accessible for consultation by national units, liaison officers, the Director, the Deputy Directors and duly empowered Europol officials.

Direct access by the national units to the information system in respect of the persons referred to in Article 8(1), point 2 shall be restricted solely to the details of identity listed in Article 8(2). If needed for a specific enquiry, the full range of data shall be accessible to them via the liaison officers.

2. Europol shall:

- 1) have the task of ensuring compliance with the provisions governing cooperation on and operation of the information system, and

- 2) be responsible for the proper working of the information system in technical and operational respects. Europol shall in particular take all necessary measures to ensure that the measures referred to in Articles 21 and 25 regarding the information system are properly implemented.

3. The national unit in each Member State shall be responsible for communication with the information system. It shall, in particular, be responsible for the security measures referred to in Article 25 in respect of the data-processing equipment used within the territory of the Member State in question, for the review in accordance

with Article 21 and, insofar as required under the laws, regulations, administrative provisions and procedures of that Member State, for the proper implementation of this Convention in other respects.

## Article 8

### Content of the information system

1. The information system may be used to store, modify and utilize only the data necessary for the performance of Europol's tasks, with the exception of data concerning related criminal offences as referred to in the second subparagraph of Article 2(3). Data entered shall relate to:

- 1) persons who, in accordance with the national law of the Member State concerned, are suspected of having committed or having taken part in a criminal offence for which Europol is competent under Article 2 or who have been convicted of such an offence;
- 2) persons who there are serious grounds under national law for believing will commit criminal offences for which Europol is competent under Article 2.

2. Personal data as referred to in paragraph 1 may include only the following details:

- 1) surname, maiden name, given names and any alias or assumed name;
- 2) date and place of birth;
- 3) nationality;
- 4) sex, and
- 5) where necessary, other characteristics likely to assist in identification, including any specific objective physical characteristics not subject to change.

3. In addition to the data referred to in paragraph 2 and data on Europol or the inputting national unit, the information system may also be used to store, modify and utilize the following details concerning the persons referred to in paragraph 1:

- 1) criminal offences, alleged crimes and when and where they were committed;
- 2) means which were or may be used to commit the crimes;
- 3) departments handling the case and their filing references;
- 4) suspected membership of a criminal organization;
- 5) convictions, where they relate to criminal offences for which Europol is competent under Article 2.

These data may also be input when they do not yet contain any references to persons. Where Europol inputs the data itself, as well as giving its filing reference it shall also indicate whether the data were provided by a third party or are the result of its own analyses.

4. Additional information held by Europol or national units concerning the groups of persons referred to in paragraph 1 may be communicated to any national unit or Europol should either so request. National units shall do so in compliance with their national law.

Where the additional information concerns one or more related criminal offences as defined in the second subparagraph of Article 2(3), the data stored in the information system shall be marked accordingly to enable national units and Europol to exchange information on the related criminal offences.

5. If proceedings against the person concerned are dropped or if that person is acquitted, the data relating to either decision shall be deleted.

## Article 9

### Right of access to the information system

1. Only national units, liaison officers, and the Director, Deputy Directors or duly empowered Europol officials shall have the right to input data directly into the information system and retrieve it therefrom. Data may be retrieved where this is necessary for the performance of Europol's tasks in a particular case; retrieval shall be effected in accordance with the laws, regulations, administrative provisions and procedures of the retrieving unit, subject to any additional provisions contained in this Convention.

2. Only the unit which entered the data may modify, correct or delete such data. Where a unit has reason to believe that data as referred to in Article 8(2) are incorrect or wishes to supplement them, it shall immediately inform the inputting unit; the latter shall examine such notification without delay and if necessary modify, supplement, correct or delete the data immediately. Where the system contains data as referred to in Article 8(3) concerning a person any unit may enter additional data as referred to in Article 8(3). Where there is an obvious contradiction between the data input, the units concerned shall consult each other and reach agreement. Where a unit intends to delete altogether data as referred to in Article 8(2) which is has input on a person and where data as referred to in Article 8(3) are held on the same person but input by other units, responsibility in terms of data protection legislation pursuant to Article 1 5(1) and the right to modify, supplement, correct and delete such data pursuant to Article 8(2) shall be transferred to the next unit to have entered data as referred to in Article 8(3) on that person. The unit intending to delete shall inform the unit to which responsibility in terms of data protection is transferred of its intention.

3. Responsibility for the permissibility of retrieval from, input into and modifications within the information system shall lie with the retrieving, inputting or modifying unit; it must be possible to identify that unit. The communication of information between national units and the competent authorities in the Member States shall be governed by national law.

### TITLE III

#### WORK FILES FOR THE PURPOSES OF ANALYSIS

##### Article 10

##### Collection, processing and utilization of personal data

1. Where this is necessary to achieve the objective laid down in Article 2(1), Europol, in addition to data of a non-personal nature, may store, modify, and utilize in other files data on criminal offences for which Europol is competent under Article 2(2), including data on the related criminal offences provided for in the second subparagraph of Article 2(3) which are intended for specific analyses, and concerning:

- 1) persons as referred to in Article 8(1);
- 2) persons who might be called on to testify in investigations in connection with the offences under consideration or in subsequent criminal proceedings;
- 3) persons who have been the victims of one of the offences under consideration or with regard to whom certain facts give reason for believing that they could be the victims of such an offence;
- 4) contacts and associates, and
- 5) persons who can provide information on the criminal offences under consideration.

The collection, storage and processing of the data listed in the first sentence of Article 6 of the Council of Europe Convention of 28 January 1981 with regard to Automatic Processing of Personal Data shall not be permitted unless strictly necessary for the purposes of the file concerned and unless such data supplement other personal data already entered in that file. It shall be prohibited to select a particular group of persons solely on the basis of the data listed in the first sentence of Article 6 of the Council of Europe Convention of 28 January 1981 in breach of the aforementioned rules with regard to purpose.

The Council, acting unanimously, in accordance with the procedure laid down in Title VI of the Treaty on European Union, shall adopt implementing rules for data files prepared by the Management Board containing additional details, in particular with regard to the categories of personal data referred to in this Article and the provisions

concerning the security of the data concerned and the internal supervision of their use.

2. Such files shall be opened for the purposes of analysis defined as the assembly, processing or utilization of data with the aim of helping a criminal investigation. Each analysis project shall entail the establishment of an analysis group closely associating the following participants in accordance with the tasks defined in Article 3(1) and (2) and Article 5(3):

- 1) analysts and other Europol officials designated by the Europol Directorate: only analysts shall be authorized to enter data into and retrieve data from the file concerned;
- 2) the liaison officers and/or experts of the Member States supplying the information or concerned by the analysis within the meaning of paragraph 6.
3. At the request of Europol or on their own initiative, national units shall, subject to Article 4(5), communicate to Europol all the information which it may require for the performance of its tasks under Article 3(1), point 2. The Member States shall communicate such data only where processing thereof for the purposes of preventing, analysing or combating offences is also authorized by their national law.

Depending on their degree of sensitivity, data from national units may be routed directly and by whatever means may be appropriate to the analysis groups, whether via the liaison officers concerned or not.

4. If, in addition to the data referred to in paragraph 3, it would seem justified for Europol to have other information for the performance of tasks under Article 3(1), point 2, Europol may request that:

- 1) the European Communities and bodies governed by public law established under the Treaties establishing those Communities;
- 2) other bodies governed by public law established in the framework of the European Union;
- 3) bodies which are based on an agreement between two or more Member States of the European Union;
- 4) third States;
- 5) international organizations and their subordinate bodies governed by public law;
- 6) other bodies governed by public law which are based on an agreement between two or more States, and
- 7) the International Criminal Police Organization,

forward the relevant information to it by whatever means may be appropriate. It may also, under the same

conditions and by the same means, accept information provided by those various bodies on their own initiative. The Council, acting unanimously in accordance with the procedure laid down in Title VI of the Treaty on European Union and after consulting the Management Board, shall draw up the rules to be observed by Europol in this respect.

5. Insofar as Europol is entitled under other Conventions to gain computerized access to data from other information systems, Europol may retrieve personal data by such means if this is necessary for the performance of its tasks pursuant to Article 3(1), point 2.

6. If an analysis is of a general nature and of a strategic type, all Member States, through liaison officers and/or experts, shall be fully associated in the findings thereof, in particular through the communication of reports drawn up by Europol.

If the analysis bears on specific cases not concerning all Member States and has a direct operational aim, representatives of the following Member States shall participate therein:

1) Member States which were the source of the information giving rise to the decision to open the analysis file, or those which are directly concerned by that information and Member States subsequently invited by the analysis group to take part in the analysis because they are also becoming concerned;

2) Member States which learn from consulting the index system that they need to be informed and assert that need to know under the conditions laid down in paragraph 7.

7. The need to be informed may be claimed by authorized liaison officers. Each Member State shall nominate and authorize a limited number of such liaison officers. It shall forward the list thereof to the Management Board.

A liaison officer shall claim the need to be informed as defined in paragraph 6 by means of a written reasoned statement approved by the authority to which he is subordinate in his Member State and forwarded to all the participants in the analysis. He shall then be automatically associated in the analysis in progress.

If an objection is raised in the analysis group, automatic association shall be deferred until completion of a conciliation procedure, which may comprise three stages as follows:

1) the participants in the analysis shall endeavour to reach agreement with the liaison officer claiming the need to be informed; they shall have no more than eight days for that purpose;

2) if no agreement is reached, the heads of the national units concerned and the Directorate of Europol shall

meet within three days;

3) if the disagreement persists, the representatives of the parties concerned on the Management Board shall meet within eight days. If the Member State concerned does not waive its need to be informed, automatic association of that Member State shall be decided by consensus.

8. The Member State communicating an item of data to Europol shall be the sole judge of the degree of its sensitivity and variations thereof. Any dissemination or operational use of analysis data shall be decided on in consultation with the participants in the analysis. A Member State joining an analysis in progress may not, in particular, disseminate or use the data without the prior agreement of the Member States initially concerned.

## Article 11

### Index system

1. An index system shall be created by Europol for the data stored on the files referred to in Article 10(1).

2. The Director, Deputy Directors and duly empowered officials of Europol and liaison officers shall have the right to consult the index system. The index system shall be such that it is clear to the liaison officer consulting it, from the data being consulted, that the files referred to in Article 6(1), point 2 and Article 10(1) contain data concerning the seconding Member State.

Access by liaison officers shall be defined in such a way that it is possible to determine whether or not an item of information is stored, but that it is not possible to establish connections or further conclusions regarding the content of the files.

3. The detailed procedures for the design of the index system shall be defined by the Management Board acting unanimously.

## Article 12

### Order opening a data file

1. For every computerized data file containing personal data operated by Europol for the purpose of performing its tasks referred to in Article 10, Europol shall specify in an order opening the file, which shall require the approval of the Management Board:

1) the file name;

2) the purpose of the file;

3) the groups of persons on whom data are stored;

4) the nature of the data to be stored, and any of the data listed in the first sentence of Article 6 of the Council of

Europe Convention of 28 January 1981 which are strictly necessary;

- 5) the type of personal data used to open the file;
- 6) the supply or input of the data to be stored;
- 7) the conditions under which the personal data stored in the file may be communicated, to which recipients and under what procedure;
- 8) the time-limits for examination and duration of storage;
- 9) the method of establishing the audit log.

The joint supervisory body provided for in Article 24 shall immediately be advised by the Director of Europol of the plan to order the opening of such a data file and shall receive the dossier so that it may address any comments it deems necessary to the Management Board.

2. If the urgency of the matter is such as to preclude obtaining the approval of the Management Board as required under paragraph 1, the Director, on his own initiative or at the request of the Member States concerned, may by a reasoned decision, order the opening of a data file. At the same time he shall inform the members of the Management Board of his decision. The procedure pursuant to paragraph 1 shall then be set in motion without delay and completed as soon as possible.

## TITLE IV

### COMMON PROVISIONS ON INFORMATION PROCESSING

#### Article 13

##### Duty to notify

Europol shall promptly notify the national units and also their liaison officers if the national units so request, of any information concerning their Member State and of connections identified between criminal offences for which Europol is competent under Article 2. Information and intelligence concerning other serious criminal offences, of which Europol becomes aware in the course of its duties, may also be communicated.

#### Article 14

##### Standard of data protection

1. By the time of the entry into force of this Convention at the latest, each Member State shall, under its national legislation, take the necessary measures in relation to the processing of personal data in data files in the framework of this Convention to ensure a standard of data protection which at least corresponds to the standard resulting from the implementation of the principles of the Council of

Europe Convention of 28 January 1981, and, in doing so, shall take account of Recommendation No R(87) 15 of the Committee of Ministers of the Council of Europe of 17 September 1987 concerning the use of personal data in the police sector.

2. The communication of personal data provided for in this Convention may not begin until the data protection rules laid down in paragraph 1 above have entered into force on the territory of each of the Member States involved in such communication.

3. In the collection, processing and utilization of personal data Europol shall take account of the principles of the Council of Europe Convention of 28 January 1981 and of Recommendation No R(87) 15 of the Committee of Ministers of the Council of Europe of 17 September 1987.

Europol shall also observe these principles in respect of non-automated data held in the form of data files, i.e. any structured set of personal data accessible in accordance with specific criteria.

#### Article 15

##### Responsibility in data protection matters

1. Subject to other provisions in this Convention, the responsibility for data stored at Europol, in particular as regards the legality of the collection, the transmission to Europol and the input of data, as well as their accuracy, their up-to-date nature and verification of the storage time-limits, shall lie with:

- 1) the Member State which input or otherwise communicated the data;
- 2) Europol in respect of data communicated to Europol by third parties or which result from analyses conducted by Europol.

2. In addition, subject to other provisions in this Convention, Europol shall be responsible for all data received by Europol and processed by it, whether such data be in the information system referred to in Article 8, in the data files opened for the purposes of analysis referred to in Article 10, or in the index system referred to in Article 11, or in the data files referred to in Article 14(3).

3. Europol shall store data in such a way that it can be established by which Member State or third party the data were transmitted or whether they are the result of an analysis by Europol.

#### Article 16

##### Provisions on the drawing up of reports

On average, Europol shall draw up reports for at least one in ten retrievals of personal data - and for each retrieval made within the information system referred to in Article 7 -

in order to check whether they are permissible under law. The data contained in the reports shall only be used for that purpose by Europol and the supervisory bodies referred to in Articles 23 and 24 and shall be deleted after six months, unless the data are further required for ongoing control. The details shall be decided upon by the Management Board following consultation with the joint supervisory body.

## Article 17

### Rules on the use of data

1. Personal data retrieved from the information system, the index system or data files opened for the purposes of analysis and data communicated by any other appropriate means, may be transmitted or utilized only by the competent authorities of the Member States in order to prevent and combat crimes falling within the competence of Europol and to combat other serious forms of crime.

The data referred to in the first paragraph shall be utilized in compliance with the law of the Member State responsible for the authorities which utilized the data.

Europol may utilize the data referred to in paragraph 1 only for the performance of its tasks as referred to in Article 3.

2. If, in the case of certain data, the communicating Member State or the communicating third State or third body as referred to in Article 10(4) stipulates particular restrictions on use to which such data is subject in that Member State or by third parties, such restrictions shall also be complied with by the user of the data except in the specific case where national law lays down that the restrictions on use be waived for judicial authorities, legislative bodies or any other independent body set up under the law and made responsible for supervising the national competent authorities within the meaning of Article 2(4). In such cases, the data may only be used after prior consultation of the communicating Member State whose interests and opinions must be taken into account as far as possible.

3. Use of the data for other purposes or by authorities other than those referred to in Article 2 of this Convention shall be possible only after prior consultation of the Member State which transmitted the data insofar as the national law of that Member State permits.

## Article 18

### Communication of data to third states and third bodies

1. Europol may under the conditions laid down in paragraph 4 communicate personal data which it holds to third states and third bodies within the meaning of Article 10(4), where:

1) this is necessary in individual cases for the purposes of preventing or combating criminal offences for which

Europol is competent under Article 2;

2) an adequate level of data protection is ensured in that State or that body, and

3) this is permissible under the general rules within the meaning of paragraph 2.

2. In accordance with the procedure in Title VI of the Treaty on European Union, and taking into account the circumstances referred to in paragraph 3, the Council, acting unanimously, shall determine the general rules for the communication of personal data by Europol to the third States and third bodies within the meaning of Article 10(4). The Management Board shall prepare the Council decision and consult the joint supervisory body referred to in Article 24.

3. The adequacy of the level of data protection afforded by third States and third bodies within the meaning of Article 10(4) shall be assessed taking into account all the circumstances which play a part in the communication of personal data; in particular, the following shall be taken into account:

1) the nature of the data;

2) the purpose for which the data is intended;

3) the duration of the intended processing, and

4) the general or specific provisions applying to the third States and third bodies within the meaning of Article 10(4).

4. If the data referred to have been communicated to Europol by a Member State, Europol may communicate them to third States and third bodies only with the Member State's consent. The Member State may give its prior consent, in general or other terms, to such communication; that consent may be withdrawn at any time.

If the data have not been communicated by a Member State, Europol shall satisfy itself that communication of those data is not liable to:

1) obstruct the proper performance of the tasks falling within a Member State's sphere of competence;

2) jeopardize the security and public order of a Member State or otherwise prejudice its general welfare.

5. Europol shall be responsible for the legality of the authorizing communication. Europol shall keep a record of communications of data and of the grounds for such communications. The communication of data shall be authorized only if the recipient gives an undertaking that the data will be used only for the purpose for which it was communicated. This shall not apply to the communication of personal data required for a Europol inquiry.

6. Where the communication provided for in paragraph 1 concerns information subject to the requirement of confidentiality, it shall be permissible only insofar as an agreement on confidentiality exists between Europol and the recipient.

## Article 19

### Right of access

1. Any individual wishing to exercise his right of access to data relating to him which have been stored within Europol or to have such data checked may make a request to that effect free of charge to the national competent authority in any Member State he wishes, and that authority shall refer it to Europol without delay and inform the enquirer that Europol will reply to him directly.

2. The request must be fully dealt with by Europol within three months following its receipt by the national competent authority of the Member State concerned.

3. The right of any individual to have access to data relating to him or to have such data checked shall be exercised in accordance with the law of the Member State where the right is claimed, taking into account the following provisions:

Where the law of the Member State applied to provides for a communication concerning data, such communication shall be refused if such refusal is necessary to:

- 1) enable Europol to fulfil its duties properly;
- 2) protect security and public order in the Member States or to prevent crime;
- 3) protect the rights and freedoms of third parties,

considerations which it follows cannot be overridden by the interests of the person concerned by the communication of the information.

4. The right to communication of information in accordance with paragraph 3 shall be exercised according to the following procedures:

1) as regards data entered within the information system defined in Article 8, a decision to communicate such data cannot be taken unless the Member State which entered the data and the Member States directly concerned by communication of such data have first had the opportunity of stating their position, which may extend to a refusal to communicate the data. The data which may be communicated and the arrangements for communicating such data shall be indicated by the Member State which entered the data;

2) as regards data entered within the information system by Europol, the Member States directly concerned by

communication of such data must first have had the opportunity of stating their position, which may extend to a refusal to communicate the data;

3) as regards data entered within the work files for the purposes of analysis as defined in Article 10, the communication of such data shall be conditional upon the consensus of Europol and the Member States participating in the analysis, within the meaning of Article 10(2), and the consensus of the Member State(s) directly concerned by the communication of such data.

Should one or more Member State or Europol have objected to a communication concerning data, Europol shall notify the person concerned that it has carried out the checks, without giving any information which might reveal to him whether or not he is known.

5. The right to the checking of information shall be exercised in accordance with the following procedures:

Where the national law applicable makes no provision for a communication concerning data or in the case of a simple request for a check, Europol, in close cooperation with the national authorities concerned, shall carry out the checks and notify the enquirer that it has done so without giving any information which might reveal to him whether or not he is known.

6. In its reply to a request for a check or for access to data, Europol shall inform the enquirer that he may appeal to the joint supervisory body if he is not satisfied with the decision. The latter may also refer the matter to the joint supervisory body if there has been no response to his request within the time-limits laid down in this Article.

7. If the enquirer lodges an appeal to the joint supervisory body provided for in Article 24, the appeal shall be examined by that body.

Where the appeal relates to a communication concerning data entered by a Member State in the information system, the joint supervisory body shall take its decision in accordance with the national law of the Member State in which the application was made. The joint supervisory body shall first consult the national supervisory body or the competent judicial body in the Member State which was the source of the data. Either national body shall make the necessary checks, in particular to establish whether the decision to refuse was taken in accordance with paragraphs 3 and 4(1) of this Article. On confirmation of that, the decision, which may extend to a refusal to communicate any information, shall be taken by the joint supervisory body in close cooperation with the national supervisory body or competent judicial body.

Where the appeal relates to a communication concerning data entered by Europol in the information system or data stored in the work files for the purposes of analysis, the joint supervisory body, in the event of persistent objections

from Europol or a Member State, may not overrule such objections unless by a majority of two-thirds of its members after having heard Europol or the Member State concerned. If there is no such majority, the joint supervisory body shall notify the enquirer that it has carried out the checks, without giving any information which might reveal to him whether or not he is known.

Where the appeal concerns the checking of data entered by a Member State in the information system, the joint supervisory body shall ensure that the necessary checks have been carried out correctly in close cooperation with the national supervisory body of the Member State which entered the data. The joint supervisory body shall notify the enquirer that it has carried out the checks, without giving any information which might reveal to him whether or not he is known.

Where the appeal concerns the checking of data entered by Europol in the information system or of data stored in the work files for the purposes of analysis, the joint supervisory body shall ensure that the necessary checks have been carried out by Europol. The joint supervisory body shall notify the enquirer that it has carried out the checks, without giving any information which might reveal to him whether or not he is known.

8. The above provisions shall apply *mutatis mutandis* to non-automated data held by Europol in the form of data files, i.e. any structured set of personal data accessible in accordance with specific criteria.

## **Article 20**

### **Correction and deletion of data**

1. If it emerges that data held by Europol which have been communicated to it by third States or third bodies or which are the result of its own analyses are incorrect or that their input or storage contravenes this Convention, Europol shall correct or delete such data.

2. If data that are incorrect or that contravene this Convention have been passed directly to Europol by Member States, they shall be obliged to correct or delete them in collaboration with Europol. If incorrect data are transmitted by another appropriate means or if the errors in the data supplied by Member States are due to faulty transmission or have been transmitted in breach of the provisions of this Convention or if they result from their being entered, taken over or stored in an incorrect manner or in breach of the provisions of this Convention by Europol, Europol shall be obliged to correct them or delete them in collaboration with the Member States concerned.

3. In the cases referred to in paragraphs 1 and 2, the Member States which are recipients of the data shall be notified forthwith. The recipient Member States shall also correct or delete those data.

4. Any person shall have the right to ask Europol to correct

or delete incorrect data concerning him.

Europol shall inform the enquirer that data concerning him have been corrected or deleted. If the enquirer is not satisfied with Europol's reply or if he has received no reply within three months, he may refer the matter to the joint supervisory body.

## **Article 21**

### **Time limits for the storage and deletion of data files**

1. Data in data files shall be held by Europol only for as long as is necessary for the performance of its tasks. The need for continued storage shall be reviewed no later than three years after the input of data. Review of data stored in the information system and its deletion shall be carried out by the inputting unit. Review of data stored in other Europol data files and their deletion shall be carried out by Europol. Europol shall automatically inform the Member States three months in advance of the expiry of the time limits for reviewing the storage of data.

2. During the review, the units referred to in the third and fourth sentences of paragraph 1 above may decide on continued storage of data until the next review if this is still necessary for the performance of Europol's tasks. If no decision is taken on the continued storage of data, those data shall automatically be deleted.

3. Storage of personal data relating to individuals as referred to in point 1 of the first subparagraph of Article 10(1) may not exceed a total of three years. Each time limit shall begin to run afresh on the date on which an event leading to the storage of data relating to that individual occurs. The need for continued storage shall be reviewed annually and the review documented.

4. Where a Member State deletes from its national data files data communicated to Europol which are stored in other Europol data files, it shall inform Europol accordingly. In such cases, Europol shall delete the data unless it has further interest in them, based on intelligence that is more extensive than that possessed by the communicating Member State. Europol shall inform the Member State concerned of the continued storage of such data.

5. Deletion shall not occur if it would damage the interests of the data subject which require protection. In such cases, the data may be used only with the consent of the data subject.

## **Article 22**

### **Correction and storage of data in paper files**

1. If it emerges that an entire paper file or data included in that file held by Europol are no longer necessary for the performance of Europol's tasks, or if the information concerned is overall in contravention of this Convention,

the paper file or data concerned shall be destroyed. The paper file or data concerned must be marked as not for use until they have been effectively destroyed.

Destruction may not take place if there are grounds for assuming that the legitimate interests of the data subject would otherwise be prejudiced. In such cases, the paper file must bear the same note prohibiting all use.

2. If it emerges that data contained in the Europol paper files are incorrect, Europol shall be obliged to correct them.

3. Any person covered by a Europol paper file may claim the right vis-à-vis Europol to correction or destruction of paper files or the inclusion of a note. Article 20(4) and Article 24(2) and (7) shall be applicable.

## Article 23

### National Supervisory Body

1. Each Member State shall designate a national supervisory body, the task of which shall be to monitor independently, in accordance with its respective national law, the permissibility of the input, the retrieval and any communication to Europol of personal data by the Member State concerned and to examine whether this violates the rights of the data subject. For this purpose, the supervisory body shall have access at the national unit or at the liaison officers' premises to the data entered by the Member State in the information system and in the index system in accordance with the relevant national procedures.

For their supervisory purposes, national supervisory bodies shall have access to the offices and documents of their respective liaison officers at Europol.

In addition, in accordance with the relevant national procedures, the national supervisory bodies shall supervise the activities of national units under Article 4(4) and the activities of liaison officers under Article 5(3), points 1 and 3 and Article 5(4) and (5), insofar as such activities are of relevance to the protection of personal data.

2. Each individual shall have the right to request the national supervisory body to ensure that the entry or communication of data concerning him to Europol in any form and the consultation of the data by the Member State concerned are lawful.

This right shall be exercised in accordance with the national law of the Member State to the national supervisory body of which the request is made.

## Article 24

### Joint Supervisory Body

1. An independent joint supervisory body shall be set up, which shall have the task of reviewing, in accordance with

this Convention, the activities of Europol in order to ensure that the rights of the individual are not violated by the storage, processing and utilization of the data held by Europol. In addition, the joint supervisory body shall monitor the permissibility of the transmission of data originating from Europol. The joint supervisory body shall be composed of not more than two members or representatives (where appropriate assisted by alternates) of each of the national supervisory bodies guaranteed to be independent and having the necessary abilities, and appointed for five years by each Member State. Each delegation shall be entitled to one vote.

The joint supervisory body shall appoint a chairman from among its members.

In the performance of their duties, the members of the joint supervisory body shall not receive instructions from any other body.

2. Europol must assist the joint supervisory body in the performance of the latter's tasks. In doing so, it shall, in particular:

- 1) supply the information it requests, give it access to all documents and paper files as well as access to the data stored in the system, and
- 2) allow it free access at any time to all its premises.
- 3) carry out the joint supervisory body's decisions on appeals in accordance with the provisions of Articles 19(7) and 20(4).

3. The joint supervisory body shall also be competent for the examination of questions relating to implementation and interpretation in connection with Europol's activities as regards the processing and utilization of personal data, for the examination of questions relating to checks carried out independently by the national supervisory bodies of the Member States or relating to the exercise of the right to information, as well as for drawing up harmonized proposals for common solutions to existing problems.

4. Each individual shall have the right to request the joint supervisory body to ensure that the manner in which his personal data have been collected, stored, processed and utilized by Europol is lawful and accurate.

5. If the joint supervisory body notes any violations of the provisions of this Convention in the storage, processing or utilization of personal data, it shall make any complaints it deems necessary to the Director of Europol and shall request him to reply within a time limit to be determined by it. The Director shall keep the Management Board informed of the entire procedure. In the event of any difficulty, the joint supervisory body shall refer the matter to the Management Board.

6. The joint supervisory body shall draw up activity reports at regular intervals. In accordance with the procedure laid

down in Title VI of the Treaty on European Union, these shall be forwarded to the Council; the Management Board shall first have the opportunity to deliver an opinion, which shall be attached to the reports.

The joint supervisory body shall decide whether or not to publish its activity report, and, if it decides to do so, determine how it should be published.

7. The joint supervisory body shall unanimously adopt its rules of procedure, which shall be submitted for the unanimous approval of the Council. It shall set up internally a committee comprising one qualified representative from each Member State with entitlement to a vote. The committee shall have the task of examining the appeals provided for in Articles 19(7) and 20(4) by all appropriate means. Should they so request, the parties, assisted by their advisers if they so wish, shall be heard by the committee. The decisions taken in this context shall be final as regards all the parties concerned.

8. It may also set up one or more other committees.

9. It shall be consulted on that part of the budget which concerns it. Its opinion shall be annexed to the draft budget in question.

10. It shall be assisted by a secretariat, the tasks of which shall be defined in the rules of procedure.

## Article 25

### Data security

1. Europol shall take the necessary technical and organizational measures to ensure the implementation of this Convention. Measures shall only be necessary where the effort they involve is proportionate to the objective they are designed to achieve in terms of protection.

2. In respect of automated data processing at Europol each Member State and Europol shall implement measures designed to:

- 1) deny unauthorized persons access to data processing equipment used for processing personal data (equipment access control);
- 2) prevent the unauthorized reading, copying, modification or removal of data media (data media control);
- 3) prevent the unauthorized input of data and the unauthorized inspection, modification or deletion of stored personal data (storage control);
- 4) prevent the use of automated data processing systems by unauthorized persons using data communication equipment (user control);
- 5) ensure that persons authorized to use an automated

data processing system only have access to the data covered by their access authorization (data access control);

- 6) ensure that it is possible to verify and establish to which bodies personal data may be transmitted using data communication equipment (communication control);
- 7) ensure that it is subsequently possible to verify and establish which personal data have been input into automated data processing systems and when and by whom the data were input (input control);
- 8) prevent unauthorized reading, copying, modification or deletion of personal data during transfers of personal data or during transportation of data media (transport control);
- 9) ensure that installed systems may, in case of interruption, be immediately restored (recovery);
- 10) ensure that the functions of the system perform without fault, that the appearance of faults in the functions is immediately reported (reliability) and that stored data cannot be corrupted by means of a malfunctioning of the system (integrity).

## TITLE V

### LEGAL STATUS, ORGANIZATION AND FINANCIAL PROVISIONS

#### Article 26

##### 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 and to conclude with third States and third bodies within the meaning of Article 10(4) the necessary confidentiality agreements pursuant to Article 18(6) as well as other arrangements in the framework of the rules laid down unanimously by the Council on the basis of this Convention and of Title VI of the Treaty on European Union.

#### Article 27

##### Organs of Europol

The organs of Europol shall be:

- 1) the Management Board;
- 2) the Director;
- 3) the Financial Controller;
- 4) the Financial Committee.

## Article 28

### Management Board

1. Europol shall have a Management Board. The Management Board:

- 1) shall take part in the extension of Europol's objective (Article 2(2));
- 2) shall define unanimously liaison officers' rights and obligations towards Europol (Article 5);
- 3) shall decide unanimously on the number of liaison officers the Member States may send to Europol (Article 5);
- 4) shall prepare the implementing rules governing data files (Article 10);
- 5) shall take part in the adoption of rules governing Europol's relations with third States and third bodies within the meaning of Article 10(4) (Articles 10, 18 and 42);
- 6) shall unanimously decide on details concerning the design of the index system (Article 11);
- 7) shall approve by a two-thirds majority orders opening data files (Article 1 2);
- 8) may deliver opinions on the comments and reports of the joint supervisory body (Article 24);
- 9) shall examine problems which the joint supervisory body brings to its attention (Article 24(5));
- 10) shall decide on the details of the procedure for checking the legal character of retrievals in the information system (Article 16);
- 11) shall take part in the appointment and dismissal of the Director and Deputy Directors (Article 29);
- 12) shall oversee the proper performance of the Director's duties (Articles 7 and 29);
- 13) shall take part in the adoption of staff regulations (Article 30);

14) shall take part in the preparation of agreements on confidentiality and the adoption of provisions on the protection of confidentiality (Articles 18 and 31);

15) shall take part in the drawing up of the budget, including the establishment plan, the auditing and the discharge to be given to the Director (Articles 35 and 36);

16) shall adopt unanimously the five-year financing plan (Article 35);

17) shall appoint unanimously the financial controller and oversee the performance of his duties (Article 35);

18) shall take part in the adoption of the financial regulation (Article 35);

19) shall unanimously approve the conclusion of the headquarters agreement (Article 37);

20) shall adopt unanimously the rules for the security clearance of Europol officials;

21) shall act by a two-thirds majority in disputes between a Member State and Europol or between Member States concerning compensation paid under the liability for unauthorized or incorrect processing of data (Article 38);

22) shall take part in any amendment of this Convention (Article 43);

23) shall be responsible for any other tasks assigned to it by the Council particularly in provisions for the implementation of this Convention.

2. The Management Board shall be composed of one representative of each Member State. Each member of the Management Board shall have one vote.

3. Each member of the Management Board may be represented by an alternate member; in the absence of the full member, the alternate member may exercise his right to vote.

4. The Commission of the European Communities shall be invited to attend meetings of the Management Board with non-voting status. However, the Management Board may decide to meet without the Commission representative.

5. The members or alternate members shall be entitled to be accompanied and advised by experts from their respective Member States at meetings of the Management Board.

6. The Management Board shall be chaired by the representative of the Member State holding the Presidency of the Council.

7. The Management Board shall unanimously adopt its rules of procedure.

8. Abstentions shall not prevent the Management Board from adopting decisions which must be taken unanimously.

9. The Management Board shall meet at least twice a year.

10. The Management Board shall adopt unanimously each year:

- 1) a general report on Europol's activities during the previous year;
- 2) a report on Europol's future activities taking into account Member States' operational requirements and budgetary and staffing implications for Europol.

These reports shall be submitted to the Council in accordance with the procedure laid down in Title VI of the Treaty on European Union.

## **Article 29**

### **Director**

1. Europol shall be headed by a Director appointed by the Council, acting unanimously in accordance with the procedure laid down in Title VI of the Treaty on European Union after obtaining the opinion of the Management Board, for a four-year period renewable once.

2. The Director shall be assisted by a number of Deputy Directors as determined by the Council and appointed for a four-year period renewable once, in accordance with the procedure laid down in paragraph 1. Their tasks shall be defined in greater detail by the Director.

3. The Director shall be responsible for:

- 1) performance of the tasks assigned to Europol;
- 2) day-to-day administration;
- 3) personnel management;
- 4) proper preparation and implementation of the Management Board's decisions;
- 5) preparing the draft budget, draft establishment plan and draft five-year financing plan and implementing Europol's budget;
- 6) all other tasks assigned to him in this Convention or by the Management Board.

4. The Director shall be accountable to the Management Board in respect of the performance of his duties. He shall attend its meetings.

5. The Director shall be Europol's legal representative.

6. The Director and the Deputy Directors may be dismissed by a decision of the Council, to be taken in accordance with the procedure laid down in Title VI of the Treaty on European Union by a two-thirds majority of the Member States, after obtaining the opinion of the Management Board.

7. Notwithstanding paragraphs 1 and 2, the first term of office after entry into force of this Convention shall be five years for the Director, four years for his immediate Deputy and three years for the second Deputy Director.

## **Article 30**

### **Staff**

1. The Director, Deputy Directors and the employees of Europol shall be guided in their actions by the objectives and tasks of Europol and shall not take or seek orders from any government, authority, organization or person outside Europol, save as otherwise provided in this Convention and without prejudice to Title VI of the Treaty on European Union.

2. The Director shall be in charge of the Deputy Directors and employees of Europol. He shall engage and dismiss employees. In selecting employees, in addition to having regard to personal suitability and professional qualifications, he shall take into account the need to ensure the adequate representation of nationals of all Member States and of the official languages of the European Union.

3. Detailed arrangements shall be laid down in staff regulations which the Council shall, after obtaining the opinion of the Management Board, adopt unanimously in accordance with the procedure laid down in Title VI of the Treaty on European Union.

## **Article 31**

### **Confidentiality**

1. Europol and the Member States shall take appropriate measures to protect information subject to the requirement of confidentiality which is obtained by or exchanged with Europol on the basis of this Convention. To this end the Council shall unanimously adopt appropriate rules on confidentiality prepared by the Management Board and submitted to the Council in accordance with the procedure laid down in Title VI of the Treaty on European Union.

2. Where Europol has entrusted persons with a sensitive activity, Member States shall undertake to arrange, at the request of the Director of Europol, for security screening of their own nationals to be carried out in accordance with their national provisions and to provide each other with mutual assistance for the purpose. The relevant authority under national provisions shall inform Europol only of the results of the security screening, which shall be binding on Europol.

3. Each Member State and Europol may entrust with the processing of data at Europol, only those persons who have had special training and undergone security screening.

## Article 32

### Obligation of discretion and confidentiality

1. Europol organs, their members, the Deputy Directors, employees of Europol and liaison officers shall refrain from any action and any expression of opinion which might be harmful to Europol or prejudice its activities.

2. Europol organs, their members, the Deputy Directors, employees of Europol and liaison officers, as well as any other person under a particular obligation of discretion or confidentiality, shall be bound not to disclose any facts or information which come to their knowledge in the performance of their duties or the exercise of their activities to any unauthorized person or to the public. This shall not apply to facts or information too insignificant to require confidentiality. The obligation of discretion and confidentiality shall apply even after leaving office or employment, or after termination of activities. The particular obligation laid down in the first sentence shall be notified by Europol, and a warning given of the legal consequences of any infringement; a written record shall be drawn up of such notification.

3. Europol organs, their members, the Deputy Directors, employees of Europol and liaison officers, as well as persons under the obligation provided for in paragraph 2, may not give evidence in or outside court or make any statements on any facts or information which come to their knowledge in the performance of their duties or the exercise of their activities, without reference to the Director or, in the case of the Director himself, to the Management Board.

The Director or Management Board, depending on the case, shall approach the judicial body or any other competent body with a view to taking the necessary measures under the national law applicable to the body approached; such measures may either be to adjust the procedures for giving evidence in order to ensure the confidentiality of the information, or, provided that the national law concerned so permits, to refuse to make any communication concerning data insofar as is vital for the protection of the interests of Europol or of a Member State.

Where a Member State's legislation provides for the right to refuse to give evidence, persons asked to give evidence must obtain permission to do so. Permission shall be granted by the Director and, as regards evidence to be given by the Director, by the Management Board. Where a liaison officer is asked to give evidence concerning information he receives from Europol, such permission shall be given after the agreement of the Member State responsible for the officer concerned has been obtained.

Furthermore, if the possibility exists that the evidence may extend to information and knowledge which a Member State has communicated to Europol or which clearly involve a Member State, the position of that Member State concerning the evidence must be sought before permission is given.

Permission to give evidence may be refused only insofar as this is necessary to protect overriding interests of Europol or of a Member State or States that need protection.

This obligation shall apply even after leaving office or employment or after termination of activities.

4. Each Member State shall treat any infringement of the obligation of discretion or confidentiality laid down in paragraphs 2 and 3 as a breach of the obligations imposed by its law on official or professional secrets or its provisions for the protection of confidential material.

Where appropriate, each Member State shall introduce, no later than the date of entry into force of this Convention, the rules under national law or the provisions required to proceed against breaches of the obligations of discretion or confidentiality referred to in paragraphs 2 and 3. It shall ensure that the rules and provisions concerned apply also to its own employees who have contact with Europol in the course of their work.

## Article 33

### Languages

1. Reports and all other papers and documentation placed before the Management Board shall be submitted in all official languages of the European Union; the working languages of the Management Board shall be the official languages of the European Union.

2. The translations required for Europol's work shall be provided by the translation centre of the European Union institutions.

## Article 34

### Informing the European Parliament

1. The Council Presidency shall each year forward a special report to the European Parliament on the work of Europol. The European Parliament shall be consulted should this Convention be amended in any way.

2. The Council Presidency or its representative appointed by the Presidency shall, with respect to the European Parliament, take into account the obligations of discretion and confidentiality.

3. The obligations laid down in this Article shall be without prejudice to the rights of national parliaments, to Article K.6 of the Treaty on European Union and to the general

principles applicable to relations with the European Parliament pursuant to Title VI of the Treaty on European Union.

## Article 35

### Budget

1. Estimates shall be drawn up of all of Europol's income and expenditure including all costs of the joint supervisory body and of the secretariat set up by it under Article 22 for each financial year and these items entered in the budget; an establishment plan shall be appended to the budget. The financial year shall begin on 1 January and end on 31 December.

The income and expenditure shown in the budget shall be in balance.

A five-year financing plan shall be drawn up together with the budget.

2. The budget shall be financed from Member States' contributions and by other incidental income. Each Member State's financial contribution shall be determined according to the proportion of its gross national product to the sum total of the gross national products of the Member States for the year preceding the year in which the budget is drawn up. For the purposes of this paragraph, "gross national product" shall mean gross national product as determined in accordance with Council Directive 89/130/EEC, Euratom of 13 February 1989 on the harmonization of the compilation of gross national product at market prices.

3. By 31 March each year at the latest, the Director shall draw up the draft budget and draft establishment plan for the following financial year and shall submit them, after examination by the Financial Committee, to the Management Board together with the draft five-year financing plan.

4. The Management Board shall take a decision on the five-year financing plan. It shall act unanimously.

5. After obtaining the opinion of the Management Board, the Council shall, in accordance with the procedure laid down in Title VI of the Treaty on European Union, adopt Europol's budget by 30 June of the year preceding the financial year at the latest. It shall act unanimously. The adoption of the budget by the Council shall entail the obligation for each Member State to make available promptly the financial contribution due from it.

6. The Director shall implement the budget in accordance with the financial regulation provided for in paragraph 9.

7. Monitoring of the commitment and disbursement of expenditure and of the establishment and collection of income shall be carried out by a financial controller from an official audit body of one of the Member States who shall

be appointed by the Management Board, acting unanimously, and shall be accountable to it. The financial regulation may make provision for ex-post monitoring by the financial controller in the case of certain items of income or expenditure.

8. The Financial Committee shall be composed of one budgetary representative from each Member State. Its task shall be to prepare for discussions on budgetary and financial matters.

9. The Council shall, in accordance with the procedure laid down in Title VI of the Treaty on European Union, unanimously adopt the financial regulation, specifying in particular the detailed rules for drawing up, amending and implementing the budget and for monitoring its implementation as well as for the manner of payment of financial contributions by the Member States.

## Article 36

### Auditing

1. The accounts in respect of all income and expenditure entered in the budget together with the balance sheet showing Europol's assets and liabilities shall be subject to an annual audit in accordance with the financial regulation. For this purpose the Director shall submit a report on the annual accounts by 31 May of the following year at the latest.

2. The audit shall be carried out by a joint audit committee composed of three members, appointed by the Court of Auditors of the European Communities on a proposal from its President. The term of office of the members shall be three years; these shall alternate in such a way that each year the member who has been on the audit committee for three years shall be replaced. Notwithstanding the provisions of the second sentence, the term of office of the member that, after drawing lots:

- is first, shall be two years;

- is second, shall be three years;

- is third, shall be four years,

in the initial composition of the joint audit committee after Europol has begun to operate.

Any costs arising from the audit shall be charged to the budget provided for in Article 35.

3. The joint audit committee shall in accordance with the procedure laid down in Title VI of the Treaty on European Union submit to the Council an audit report on the annual accounts; prior thereto the Director and Financial Controller shall be given an opportunity to express an opinion on the audit report and the report shall be discussed by the Management Board.

4. The Europol Director shall provide the members of the joint audit committee with all information and every assistance which they require in order to perform their task.

5. A decision on the discharge to be given to the Director in respect of budget implementation for the financial year in question shall be taken by the Council, after examination of the report on the annual accounts.

6. The detailed rules for performing audits shall be laid down in the Financial Regulation.

### **Article 37**

#### **Headquarters Agreement**

The necessary arrangements concerning the accommodation to be provided for Europol in the headquarters State and the facilities to be made available by that State as well as the particular rules applicable in the Europol headquarters State to members of Europol's organs, its Deputy Directors, employees and members of their families shall be laid down in a headquarters agreement between Europol and the Kingdom of the Netherlands to be concluded after obtaining the unanimous approval of the Management Board.

## **TITLE VI**

### **LIABILITY AND LEGAL PROTECTION**

#### **Article 38**

##### **Liability for unauthorised or incorrect data processing**

1. Each Member State shall be liable, in accordance with its national law, for any damage caused to an individual as a result of legal or factual errors in data stored or processed at Europol. Only the Member State in which the event which gave rise to the damage occurred may be the subject of an action for compensation on the part of the injured party, who shall apply to the courts having jurisdiction under the national law of the Member State involved. A Member State may not plead that another Member State had transmitted inaccurate data in order to avoid its liability under its national legislation vis-a-vis an injured party.

2. If these legal or factual errors occurred as a result of data erroneously communicated or of failure to comply with the obligations laid down in this Convention on the part of one or more Member States or as a result of unauthorised or incorrect storage or processing by Europol, Europol or the other Member State in question shall be bound to repay, on request, the amounts paid as compensation unless the data were used by the Member State in the territory of which the damage was caused in breach of this Convention.

3. Any dispute between that Member State and Europol or

another Member State over the principle or amount of the repayment must be referred to the Management Board, which shall settle the matter by a two-thirds majority.

#### **Article 39**

##### **Other liability**

1. Europol's contractual liability shall be governed by the law applicable to the contract in question.

2. In the case of non-contractual liability, Europol shall be obliged, independently of any liability under Article 38, to make good any damage caused through the fault of its organs, of its Deputy Directors or of its employees in the performance of their duties, insofar as it may be imputed to them and regardless of the different procedures for claiming damages which exist under the law of the Member States.

3. The injured party shall have the right to demand that Europol refrain from or drop any action.

4. The national courts of the Member States competent to deal with disputes involving Europol's liability as referred to in this Article shall be determined by reference to the relevant provisions of the Brussels Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, as later amended by Accession Agreements.

#### **Article 40**

##### **Settlement of disputes**

1. Disputes between Member States on the interpretation or application of this Convention shall in an initial stage be discussed by the Council in accordance with the procedure set out in Title VI of the Treaty on European Union with the aim of finding a settlement.

2. When such disputes are not so settled within six months, the Member States who are parties to the dispute shall decide, by agreement among themselves, the modalities according to which they shall be settled.

3. The provisions on appeals referred to in the rules relating to the conditions of employment applicable to temporary and auxiliary staff of the European Communities shall apply, mutatis mutandis, to Europol staff.

#### **Article 41**

##### **Privileges and immunities**

1. Europol, the members of its organs and the Deputy

Directors and employees of Europol shall enjoy the privileges and immunities necessary for the performance of their tasks in accordance with a Protocol setting out the rules to be applied in all Member States.

2. The Kingdom of the Netherlands and the other Member States shall agree in the same terms that liaison officers seconded from the other Member States as well as members of their families shall enjoy those privileges and immunities necessary for the proper performance of the tasks of the liaison officers at Europol.

3. The Protocol referred to in paragraph 1 shall be adopted by the Council acting unanimously in accordance with the procedure laid down in Title VI of the Treaty on European Union and approved by the Member States in accordance with their respective constitutional requirements.

## TITLE VII

### FINAL PROVISIONS

#### Article 42

##### Relations with third states and third bodies

1. Insofar as is relevant for the performance of the tasks described in Article 3, Europol shall establish and maintain cooperative relations with third bodies within the meaning of Article 10(4), points 1 to 3. The Management Board shall unanimously draw up rules governing such relations. This provision shall be without prejudice to Article 10(4) and (5) and Article 18(2); exchanges of personal data shall take place only in accordance with the provisions of Titles 11 to IV of this Convention.

2. Insofar as is required for the performance of the tasks described in Article 3, Europol may also establish and maintain relations with third States and third bodies within the meaning of Article 10(4), points 4, 5, 6 and 7. Having obtained the opinion of the Management Board, the Council, acting unanimously in accordance with the procedure laid down in Title VI of the Treaty on European Union, shall draw up rules governing the relations referred to in the first sentence. The third sentence of paragraph 1 shall apply *mutatis mutandis*.

#### Article 43

##### Amendment of the Convention

1. In accordance with the procedure laid down in Title VI of the Treaty on European Union, the Council, acting on a proposal from a Member State and, after consulting the Management Board, shall unanimously decide, within the framework of Article K.1(9) of the Treaty on European Union, on any amendments to this Convention which it shall recommend to the Member States for adoption in accordance with their respective constitutional requirements.

2. The amendments shall enter into force in accordance with Article 45(2) of this Convention.

3. However, the Council, acting unanimously in accordance with the procedure laid down in Title VI of the Treaty on European Union, may decide, on the initiative of a Member State and after the Management Board has discussed the matter, to amplify, amend or supplement the definitions of forms of crime contained in the Annex. It may in addition decide to introduce new definitions of the forms of crime listed in the Annex.

4. The Secretary-General of the Council of the European Union shall notify all Member States of the date of entry into force of the amendments.

#### Article 44

##### Reservations

Reservations shall not be permissible in respect of this Convention.

#### Article 45

##### Entry into force

1. This Convention shall be subject to adoption by the Member States in accordance with their respective constitutional requirements.

2. Member States shall notify the depositary of the completion of their constitutional requirements for adopting this Convention.

3. This Convention shall enter into force on the first day of the month following the expiry of a three-month period after the notification, referred to in paragraph 2 by the Member State of the European Union on the date of adoption by the Council of the act drawing up this Convention, by the last Member State to fulfil that formality.

4. Without prejudice to paragraph 2, Europol shall not take up its activities under this Convention until the last of the acts provided for in Articles 5(7), 10(1), 24(7), 30(3), 31 (1), 35 (9), 37 and 41 (1) and (2) enters into force.

5. When Europol takes up its activities, the activities of the Europol Drugs Unit under the joint action concerning the Europol Drugs Unit of 10 March 1995 shall come to an end. At the same time, all equipment financed from the Europol Drugs Unit joint budget, developed or produced by the Europol Drugs Unit or placed at its disposal free of charge by the headquarters State for its permanent use, together with that Unit's entire archives and independently administered data files shall become the property of Europol.

6. Once the Council has adopted the act drawing up this Convention, Member States, acting either individually or in

common, shall take all preparatory measures under their national law which are necessary for the commencement of Europol activities.

#### Article 46

##### Accession by new member states

1. This Convention shall be open to accession by any State that becomes a member of the European Union.

2. The text of this Convention in the language of the acceding State, drawn up by the Council of the European Union, shall be authentic.

3. Instruments of accession shall be deposited with the depositary.

4. This Convention shall enter into force with respect to any State that accedes to it on the first day of the month following expiry of a three-month period following the date of deposit of its instrument of accession or on the date of entry into force of the Convention if it has not already entered into force at the time of expiry of the said period.

#### Article 47

##### Depositary

1. The Secretary-General of the Council of the European Union shall act as depositary of this Convention.

2. The depositary shall publish in the Official Journal of the European Communities the notifications, instruments or communications concerning this Convention.

IN WITNESS WHEREOF the undersigned Plenipotentiaries have signed this Convention.

DONE at Brussels this 26 day of July in the year 1995 in a single original in the Danish, Dutch, English, Finnish, French, German, Greek, Irish, Italian, Portuguese, Spanish and Swedish languages, each text being equally authentic; it shall be deposited with the Secretary-General of the Council of the European Union, which shall transmit a certified copy to each of the Member States.

#### ANNEX

##### REFERRED TO IN ARTICLE 2

List of other serious forms of international crime which Europol could deal with in addition to those already provided for in Article 2(2) in compliance with Europol's objective as set out in Article 2(1).

Against life, limb or personal freedom:

- murder, grievous bodily injury
- illicit trade in human organs and tissue
- kidnapping, illegal restraint and hostage-taking
- racism and xenophobia

Against property or public goods including fraud:

- organized robbery
- illicit trafficking in cultural goods, including antiquities and works of art
- swindling and fraud
- racketeering and extortion
- counterfeiting and product piracy
- forgery of administrative documents and trafficking therein
  
- forgery of money and means of payment
- computer crime
- corruption

Illegal trading and harm to the environment:

- illicit trafficking in arms, ammunition and explosives
- illicit trafficking in endangered animal species
- illicit trafficking in endangered plant species and varieties
- environmental crime
- illicit trafficking in hormonal substances and other growth promoters.

In addition, in accordance with Article 2(2), the act of instructing Europol to deal with one of the forms of crime listed above implies that it is also competent to deal with the related money-laundering activities and the related criminal offences.

With regard to the forms of crime listed in Article 2(2) for the purposes of this Convention:

- "crime connected with nuclear and radioactive substances" means the criminal offences listed in Article 7(l) of the Convention on the Physical Protection of Nuclear Material, signed at Vienna and New York on 3 March 1980, and relating to the nuclear and/or radioactive materials defined in Article 197 of the Euratom Treaty and Directive 80/836 Euratom of 15 July 1980;

- "illegal immigrant smuggling" means activities intended deliberately to facilitate, for financial gain, the entry into, residence or employment in the territory of the Member States of the European Union, contrary to the rules and conditions applicable in the Member States;

- "traffic in human beings" means subjection of a person to the real and illegal sway of other persons by using violence or menaces or by abuse of authority or intrigue with a view to the exploitation of prostitution, forms of sexual exploitation and assault of minors or trade in abandoned children;

- "motor vehicle crime" means the theft or misappropriation of motor vehicles, lorries, semi-trailers, the loads of lorries or semi-trailers, buses, motorcycles, caravans and agricultural vehicles, works vehicles, and the spare parts for such vehicles, and the receiving and

concealing of such objects;

-"illegal money-laundering activities" means the criminal offences listed in Article 6(1) to (3) of the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, signed at Strasbourg on 8 November 1990.

The forms of crime referred to in Article 2 and in this Annex shall be assessed by the competent national authorities in accordance with the national law of the Member States to which they belong.

## DECLARATIONS

### Re Article 10(1) of the Convention

"The Federal Republic of Germany and the Republic of Austria will continue to ensure that the following principle is affirmed when drafting the implementing provisions concerning Article 10(1):

Data on persons referred to in point 1 of the first sentence of Article 10(1), other than those listed in Article 8(2) and (3) may be stored only if there are reasons to suspect, because of the nature of the act or of its perpetration, or any other intelligence, that criminal proceedings need to be taken against such persons for criminal offences for which Europol is competent under Article 2."

### Re Article 14(1) and (3), Article 15(2) and Article 19(8) of the Convention

1. "The Federal Republic of Germany and the Republic of Austria will transmit data under this Convention on the understanding that, for the non-automated processing and use of such data, Europol and the Member States will comply with the spirit of the data protection provisions of this Convention."

2. "The Council declares that, having regard to Articles 14(1) and (3), 15(2) and 19(8) of the Convention, with regard to compliance with the level of protection of data exchanged between Member States and Europol in the case of non-automated data processing, Europol will - three years after its inception and with the participation of the joint supervisory authority and national control authorities each acting within its sphere of competence - draw up a report, which will be submitted to the Council for examination after consideration by the Management Board."

### Article 40(2)

The following Member States agree that in such cases they will systematically submit the dispute in question to the Court of Justice of the European Communities:

Kingdom of Belgium, Kingdom of Denmark, Federal

Republic of Germany, Hellenic Republic, Kingdom of Spain, French Republic, Ireland, Italian Republic, Grand Duchy of Luxembourg, Kingdom of the Netherlands, Republic of Austria, Portuguese Republic, Republic of Finland, Kingdom of Sweden".

### Article 42

"The Council declares that Europol should as a matter of priority establish relations with the competent bodies of those States with which the European Communities and their Member States have established a structured dialogue."

## Chapter 5

# Joint Action on Europol Drugs Unit

JOINT ACTION of 10 March 1995

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

(95/73/JHA)

THE COUNCIL OF THE EUROPEAN UNION,

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

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

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

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

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

Whereas, at its meeting held in Maastricht on 9 and 10

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

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

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

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

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

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

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

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

HAS DECIDED AS FOLLOWS:

#### Article 1

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

#### Article 2

##### Objectives and scope

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

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

- (a) illicit drug trafficking;
- (b) illicit trafficking in radioactive and nuclear substances;
- (c) crimes involving clandestine immigration networks;
- (d) illicit vehicle trafficking;

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

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

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

- (a) exchange, between Member States, of information (including personal information) in furtherance of specific criminal investigations concerning the criminal activities referred to in paragraph 2;
- (b) preparation of general situation reports and analyses of criminal activities on the basis of non-personal information supplied by Member States or from other sources.

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

#### Article 3

##### Data processing

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

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

The protection of all information from unauthorized access and against destruction, including ensuring the physical

protection of data-processing systems and links, must be ensured.

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

#### Article 4

##### Data protection

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

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

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

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

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

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

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

#### Article 5

##### Staffing

1. The Unit shall be headed by a Coordinator. In

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

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

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

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

#### Article 6

##### Responsibility

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

#### Article 7

##### Finance

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

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

#### Article 8

##### Entry into force

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

Signed in Brussels, 10 March 1995.

# Chronology

## 28-29 June 1991

European Council in Luxembourg agrees EUROPOL should be set up

## 4 December 1991

Trevi Ministers agree that the Europol Drugs Unit should be set up as a first step

## 9-10 December 1991

European Council meeting signs the Maastricht Treaty which includes the creation of EUROPOL and EDU

## 26-27 June 1992

European Council in Lisbon agrees that a Convention to establish Europol should be drawn up

## 18 September 1992

Trevi Ministers meeting agrees EDU should start work on 1 January 1993 covering drug trafficking and associated money laundering

## 2 June 1993

Ministerial Agreement setting up EDU signed in Copenhagen at a meeting of the Trevi Ministers

## 30 October 1993

Ministerial Agreement setting up the EDU came into effect

## 1 November 1993

Maastricht Treaty comes into effect: Council of Justice and Home Affairs Ministers and K4 Committee set up

## 16 February 1994

Europol's permanent headquarters in the Hague, the Netherlands, opens

## July 1994

Sweden, Finland and Austria start to attend meetings of the Europol Drugs Unit

## December 1994

Essen Summit, under the German Presidency agrees that the EDU should be given additional roles (see Chapter on the Europol Drugs Unit)

## 10 March 1995

Joint Action on Europol Drugs Unit agreed at a meeting of the

Council of Justice and Home Affairs Ministers in Brussels

## 26 July 1995

COREPER representatives finally sign the Europol Convention on behalf of their respective governments

## 23 November 1995

Council of Justice and Home Affairs Ministers fail to agree on role of the European Court of Justice

## June 1996

Deadline for deciding on the role of the European Court of Justice - a number of parliaments will not start the ratification process until this issue is decided

# Rules and Regulations

There are at least 19 sets of Rules and Regulations which have to be adopted before implementing the Convention - in addition to the decision over the role of the European Court of Justice. Some of which contain provisions crucial to the powers being given to Europol and *which should be part of any parliamentary ratification process.*

## Rules to be adopted (and the body responsible) as set out in Article 45.4:

- 1.Rights and obligations of liaison officers:** the Management Board (Article 5.7)
- 2.Rules for data files:** the Council of Ministers (Article 10.1), see below
- 3.Rules of procedure for the Joint Supervisory Body:** the Council of Ministers (Article 24.7)
- 4.Staff regulations:** the Council of Ministers (Article 30.3)
- 5.Rules of confidentiality:** the Council of Ministers (Article 31.1)
- 6.Financial regulation:** the Council of Ministers (Article 35.9)
- 7.Headquarters Agreement:** Management Board (Article 37)
- 8.Privileges and immunities:** the Council of Ministers and member states (Article 41.1 & 2)

## Additional rules and procedures to be adopted:

- 9.Rules for accepting third state or third body data:** the Council of Ministers (Article 10.4 & Article 39)
- 10.Detailed procedures for the index system:** Management Board (Article 11)
- 11.Rules for the communication of personal data to third**

**States and third bodies:** the Council of Ministers (Article 18.2)

**12.Headquarters agreement with the Netherlands government:** Europol (Article 26.3)

**13.Confidentiality agreements with third states and third bodies:** Europol (Article 26.2)

**14.Liaison officers' rights and obligations:** Management Board (Article 28.2, re: Article 5)

**15.Details concerning the design of the index system:** Management Board (Article 28.6, re: Article 11)

**16.Procedure for checking the legal character of retrievals in the information system:** Management Board (Article 28.10, re: Article 16)

**17.Breaches of the obligations of discretion or confidentiality:** all Members States to introduce law covering (Article 32.4)

**18.Protocol covering privileges and immunities of Europol staff:** the Council of Ministers (Article 41.3)

**19.Rules on relations with third bodies and third states:** the Council of Ministers (Article 42.1, re: Articles 10.4 & 18.2)

## Draft regulation on data files

The draft Regulation (Article 10.1) shows the importance of considering all these additional texts (EUROPOL 74, 12.9.95). The draft, which contains 15 Articles, says: 1) that information can held on people listed in Article 10.1 "as well as other persons not listed there, but whose registration might be of interest for a specific analysis (Article 3); 2) the range of information which can be held is extended under Article 4 to include "Personal (ID) number", "financial status", and a general power to hold "other information suitable for identification"; 3) in Article 5, "Non-personal-related data", on other "members" of "any analysed group"; 4) Article 6 makes explicit that if it is "necessary" information can be held on race, political views, religion, health and sexuality (Article 4.3 and 6.1); 5) the high-level analysis files of Europol are to be classified: "according to the reliability of information: 1: very reliable, 2: relatively reliable, 3: *not very reliable*" (Article 8, italics added).

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