



**COUNCIL OF
THE EUROPEAN UNION**

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NOTE

from : General Secretariat

to : Europol Working Party/Article 36 Committee

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Subject : Proposal for a Council Decision establishing the European Police Office
(EUROPOL) - consolidated text

Delegations will find attached a revised consolidated draft of the above-mentioned proposal for a Council Decision as it results from the discussions in the Europol Working Party, held on 17 March 2008.

Proposal for a
COUNCIL DECISION
establishing the European Police Office (EUROPOL)¹

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 30(1)(b), Article 30(2) and Article 34(2)(c) thereof,

Having regard to the proposal from the Commission²,

Having regard to the opinion of the European Parliament³,

Whereas:

- (1) The establishment of a European Police Office (Europol) was agreed in the Treaty on European Union of 7 February 1992, and regulated in the Convention based on Article K.3 of the Treaty on European Union, on the establishment of a European Police Office (“the Europol Convention”)⁴.
- (2) The Europol Convention has been the subject of a number of amendments enshrined in three protocols which have entered into force after a lengthy process of ratification; consequently replacing the Convention by a Decision will ease further amendments as necessary.
- (3) Simplification and improvement of Europol’s legal framework can be partially achieved through establishing Europol as an entity of the European Union, funded from the general budget of the European Communities, due to the subsequent application of the general rules and procedures [...].

1 NL, CZ, SE and UK Parliamentary reservations

2 OJ C [...], [...], p. [...].

3 OJ C [...], [...], p. [...].

4 OJ C 316, 27.11.1995, p. 1.

- (4) Recent legal instruments setting up similar entities of the European Union in the areas covered by Title VI of the Treaty on European Union (Council Decision of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime⁵ and the Council Decision of 20 September 2005 establishing the European Police College (CEPOL) and repealing Decision 2000/820/JHA⁶) have taken the form of Council decisions, since such decisions are more easily adaptable to changing circumstances and emerging political priorities.
- (5) Establishing Europol as an entity of the European Union, funded from the general budget of the European Communities will enhance the role of the European Parliament in the control over Europol, through the involvement of the European Parliament in the adoption of the budget, including the establishment plan and the discharge procedure.
- (6) Submitting Europol to the general rules and procedures applicable to similar entities of the European Union will ensure an administrative simplification which will allow Europol to devote more of its resources to its core tasks.
- (7) Further simplification and improvement of Europol's functioning can be achieved through measures aimed at widening the possibilities for Europol to assist and support the competent law enforcement authorities of the Member States, without providing for executive powers for Europol staff.
- (8) One of these improvements is to ensure that Europol can assist the competent authorities of the Member States in combating specific forms of serious crime, without the current limitation that there must be factual indications that an organised criminal structure is involved.

5 OJ L 63, 6.3.2002, p. 1.

6 OJ L 256, 1.10.2005, p. 63.

(8a) The establishment of Joint Investigation Teams should be encouraged and it is important for Europol staff to be able to participate in them. To ensure that such participation is possible in every Member State, there is a need to guarantee that Europol staff do not benefit from the application of immunities whilst they are working as a member of the Joint Investigation Team. This will be possible after the adoption of Regulation XX referred to in Article 50 (1).

(9) [...]

(10) Europol National Units should have direct access to all data in the Europol Information System to avoid unnecessary procedures.

(11) In order to achieve its objectives, Europol processes personal data by automated means or in structured manual files. Accordingly, the necessary steps should be taken to guarantee a level of data protection which corresponds at least to that which results from the application of the principles of the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (Council of Europe) signed in Strasbourg on 28 January 1981, together with subsequent amendments thereto, once such amendments are in force between the Member States.

(11bis) Council Framework Decision 2008/XX/JHA on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters in the processing of personal data is applicable to the transfer of personal data by Member States to Europol. The relevant set of data protection provisions of the Council Decision establishing the European Police Office (EUROPOL) will not be affected by this Framework Decision and contains specific provisions on the protection of personal data regulating these matters more in detail because of the particular nature, functions and competences of Europol.

(12) [...]

- (13) There is a need for a Data Protection Officer who should be responsible for ensuring, in an independent manner, the lawfulness of data processing and compliance with the provisions of this Decision concerning the processing of personal data, including the processing of personal data on Europol staff which is protected by Article 24 of Regulation (EC) No 45/2001.
- (14) Europol's existing possibilities for creating and managing data processing systems in support of its tasks should be widened; such additional data processing systems should be established and maintained in accordance with⁷ general principles of data protection enshrined in the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data 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, by means of a Management Board Decision approved by the Council.
- (15) [...]⁸
- (16) For the purpose of fulfilling its mission, it is appropriate that Europol cooperates with European bodies and agencies, including Eurojust, ensuring an adequate level of data protection.
- (17) [...]
- (18) Europol should be able to conclude agreements or working arrangements with Community or Union related institutions, bodies and agencies in order to increase mutual effectiveness in combating serious forms of crime which fall in the respective competence of both parties and to avoid duplication of work.
- (19) Europol's possibilities for co-operating with Third States and organisations should be rationalised in order to ensure consistency with the general policy of the Union in this respect, and through new provisions on how such co-operation is to take place in the future.

⁷ IE scrutiny reservation on the words "in accordance with".

⁸ SE suggested inserting the following recital: "This Council Decision does not prevent a Member State from applying its constitutional rules relating to access to official documents."

- (20) The governance of Europol should be improved through simplified procedures and more general descriptions of the tasks of the Management Board [...] and the establishment of a common rule that all decisions should be taken by a two-thirds majority.
- (21) Provisions for enhanced control over Europol through the European Parliament are also desirable to ensure that Europol remains a fully accountable and transparent organisation, with due account being taken of the necessity to safeguard the confidentiality of operational information.
- (22) Judicial control over Europol will be exercised in accordance with Article 35 of the Treaty on European Union.
- (23) In order to enable Europol to continue to fulfil its tasks to the best of its abilities, carefully designed transitional measures should be laid down.
- (24) Since the objectives of this Decision, namely the need for establishing an entity responsible for law enforcement cooperation at EU level, cannot be sufficiently achieved by the Member States and can, therefore, by reason of the scale and effects of the action, be better achieved at the level of the Union, the Council may adopt measures in accordance with the principle of subsidiarity, referred to in Article 2 of the Treaty on European Union and defined in Article 5 of the Treaty establishing the European Community. In accordance with the principle of proportionality, this Decision does not go beyond what is necessary in order to achieve those objectives.
- (25) This Decision respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union,

HAS DECIDED AS FOLLOWS:

CHAPTER I - ESTABLISHMENT AND TASKS

Article 1

Establishment

1. This Decision replaces the provisions of the Convention based on Article K.3 of the Treaty on European Union, on the establishment of a European Police Office (“the Europol Convention”). Europol shall have its seat in The Hague, the Netherlands.
2. Europol, as referred to in this Decision, shall be regarded as the legal successor of Europol, as established by the Europol Convention.
3. Europol shall liaise with a single National Unit in each Member State, to be established or designated in accordance with Article 8.

Article 2

Legal capacity

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

Article 3

Objective

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

Article 4

Competence

1. The competence of Europol shall cover organised crime, terrorism and other forms of serious crime as laid down in Annex I to this Decision, affecting two or more Member States in such a way as to require a common approach by the Member States owing to the scale, significance and consequences of the offences.
2. [...]
- 2a. On a recommendation of the Management Board, the Council lays down its priorities for Europol, particularly taking account of strategic analyses and threat assessments prepared by Europol.
3. Europol's competence shall also cover related criminal offences. The following offences shall be regarded as related criminal offences:
 - criminal offences committed in order to procure the means for perpetrating acts within Europol's sphere of competence;

- criminal offences committed in order to facilitate or carry out acts within Europol's sphere of competence;
- criminal offences committed to ensure the impunity of acts within Europol's sphere of competence.

Article 5

Tasks

1. Europol shall have the following principal tasks:
 - (a) the collection, storage, processing, analysis and exchange of information and intelligence;
 - (b) to notify the competent authorities of the Member States without delay via the National Unit referred to in Article 8 of information concerning them and of any connections identified between criminal offences;
 - (c) to aid investigations in the Member States, in particular by forwarding all relevant information to the National Units;
 - (d) to ask the competent authorities of the Member States concerned to initiate, conduct or coordinate investigations and to suggest the setting up of a joint investigation team in specific cases;
 - (e) to provide intelligence and analytical support to Member States in connection with a major international event;

- (f) to prepare threat assessments, strategic analyses and general situation reports related to its objective, including organised crime threat assessments.
2. The tasks specified in paragraph 1 shall include providing support to Member States in their tasks of gathering and analysing information from the internet to assist in the identification of criminal activities facilitated or committed using the internet.
 3. [...]
 4. Europol shall have the following additional tasks:
 - (a) to develop specialist knowledge of the investigative procedures of the competent authorities in the Member States and to provide advice on investigations;
 - (b) to provide strategic intelligence to assist and promote the efficient and effective use of the resources available at national and at European Union level for operational activities and support of such activities.
 5. Additionally, in the context of its objective under Article 3, Europol may in accordance with the staffing and budgetary resources at its disposal and within the limits set by the Management Board, assist Member States through support, advice and research in the following areas:
 - (a) training of members of their competent authorities, where appropriate in cooperation with the European Police College;

- (b) organisation and equipment of those authorities through facilitating the provision of technical support between the Member States;
 - (c) crime prevention methods;
 - (d) technical and forensic methods and analysis, as well as investigative procedures.
6. Europol shall also act as the Central Office for combating Euro counterfeiting in accordance with the Council Decision 2005/511/JHA of 12 July 2005. Europol can also encourage the coordination of measures carried out in order to fight Euro counterfeiting by the Member States' competent authorities or in the context of joint investigation teams, where appropriate in liaison with European and third countries bodies. **Upon request**, Europol may financially support investigations against Euro counterfeiting.

Article 6

Participation in joint investigation teams

1. Europol staff may participate in a support capacity in joint investigation teams, including those teams set up in accordance with Article 1 of the Framework Decision of 13 June 2002 on joint investigation teams, in accordance with Article 13 of the Convention of 29 May 2000 on mutual assistance in criminal matters between the Member States of the European Union, or in accordance with Article 24 of the Convention of 18 December 1997 on mutual assistance and cooperation between customs administrations, as far as those teams are investigating criminal offences for which Europol is competent under Article 4.

Europol staff may, within the limits provided for by the law of the Member States where the joint investigation team operates and in accordance with the arrangement referred to in paragraph 3, assist in all activities and exchange information with all members of the joint investigation team, in accordance with paragraph 5. However, they shall not take part in the taking of any coercive measures.

2. [...]
3. The administrative implementation of the participation of Europol staff in a joint investigation team shall be laid down in an arrangement between the Director and the competent authorities of the Member States participating in the joint investigation team, with the involvement of the National Units. The rules governing such arrangements shall be determined by the Management Board.
4. The rules as referred to in paragraph 3 shall specify under which conditions the Europol staff are placed at the disposal of the joint investigation team.
5. In accordance with the arrangement referred to in paragraph 3, staff of Europol may liaise directly with the members of the joint investigation team and provide members and seconded members of the joint investigation team, in accordance with the present Decision, with information from any of the components of the information processing systems referred to in Article 10. In case of direct liaison, the National Units of the Member States represented in the team as well as the Member States which provided the information shall at the same time be informed thereof by Europol.
6. Information obtained by a Europol staff member while part of a joint investigation team may, with the consent and under the responsibility of the Member State which provided the information, be included in any of the components of the computerised system under the conditions laid down in this Decision.

7. During the operations of a joint investigation team, Europol staff shall, with respect to offences committed against or by them, be subject to the national law of the Member State of operation applicable to persons with comparable functions.

Article 7

Requests made by Europol to initiate criminal investigations

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

Article 8
National units

1. Each Member State shall establish or designate a National Unit to carry out the tasks set out in this Article. One official shall be appointed in each Member State as the Head of the National Unit.
2. The National Unit shall be the only liaison body between Europol and the competent national authorities. However, Member States may allow direct contacts between designated competent authorities and Europol subject to conditions determined by the Member State in question, including prior involvement of the National Unit.

The National Unit shall at the same time receive from Europol any information exchanged in the course of direct contacts between Europol and designated competent authorities.

Relationships between the National Unit and the competent authorities shall be governed by national law, and in particular, the relevant national constitutional 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. The National Units shall:
 - (a) supply Europol on their own initiative with the information and intelligence necessary for it to carry out its tasks;
 - (b) respond to Europol's requests for information, intelligence and advice;
 - (c) keep information and intelligence up to date;

- (d) evaluate information and intelligence in accordance with national law for the competent authorities and transmit this material to them;
 - (e) issue requests for advice, information, intelligence and analysis to Europol;
 - (f) supply Europol with information for storage in its databases;
 - (g) ensure compliance with the law in every exchange of information between themselves and Europol.
5. Without prejudice to the exercise of the responsibilities incumbent upon Member States with regard to the maintenance of law and order and the safeguarding of internal security, a National Unit shall not be obliged in a particular case to supply information and intelligence if this would mean:
- (a) harming essential national security interests; or
 - (b) jeopardizing the success of a current investigation or the safety of individuals; or
 - (c) disclosing information pertaining to organisations 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 the National Units shall meet on a regular basis to assist Europol on operational matters, at their own instigation or at the request of the Management Board or the Director, in particular to:

- (a) consider and develop proposals that will improve Europol's operational effectiveness and encourage commitment from Member States;
- (b) evaluate the reports and analyses drafted by Europol in accordance with Article 5 (1) (f) and develop measures in order to help implement their findings;
- (c) provide support in the establishment of joint investigation teams involving Europol in accordance with Article 5 (1)(d) and Article 6.

Article 9

Liaison officers

1. Each National Unit shall second at least one Liaison Officer to Europol. Except as otherwise stipulated in specific provisions of this Decision, Liaison Officers shall be subject to the national law of the seconding Member State.
2. The Liaison Officers will constitute the national liaison bureaux at Europol and 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 8(4) and (5), the Liaison Officers shall:
 - (a) provide Europol with information from the seconding National Unit;
 - (b) forward information from Europol to the seconding National Unit;
 - (c) cooperate with the Europol staff by providing information and giving advice; and

- (d) assist in the exchange of information from their National Units with the Liaison Officers of other Member States under their responsibility in accordance with the national law; these bilateral exchanges may also cover crimes outside of the competence of Europol, as far as allowed under national law.
4. Article 34 shall apply mutatis mutandis to the activity of the Liaison Officers.
 5. The rights and obligations of Liaison Officers in relation to Europol shall be determined by the Management Board.
 6. Liaison Officers shall enjoy the privileges and immunities necessary for the performance of their tasks in accordance with Article 50(3).
 7. Europol shall ensure that Liaison Officers are fully informed about and associated with all of its activities, as far as compatible with their position.
 8. Europol shall provide Member States free of charge with the necessary premises in the Europol building and adequate support for the fulfilment of the activities of their Liaison Officers. All other costs which arise in connection with the secondment of Liaison Officers shall be borne by the seconding Member State, including the costs of equipment for Liaison Officers, to the extent that the Management Board does not recommend otherwise in a specific case when drawing up the budget of Europol.

CHAPTER II - INFORMATION PROCESSING SYSTEMS

Article 10⁹

Information processing

1. Insofar as it is necessary to achieve its objectives, Europol shall process information and intelligence, including personal data, in accordance with this Decision. Europol shall establish and maintain the Europol Information System as referred to in Article 11, and the Analysis Work Files as referred to in Article 14. Europol may establish and maintain also other systems processing personal data set up in accordance with paragraphs 2 and 3.
2. The Management Board, acting on a proposal from the Director, after having taken into account the possibilities offered by the existing Europol data processing systems, and having consulted the Joint Supervisory Body, shall decide on the establishment of a new system processing personal data. The Management Board Decision shall be submitted to the Council for approval.
3. This Management Board Decision shall determine the conditions and limitations under which Europol may establish the new system processing personal data. The Decision may allow processing of personal data related to the categories of persons referred to in Article 14 (1) of this Council Decision, but not the processing of personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs or trade-union membership and the processing of data concerning health or sex life. The Decision shall ensure that the measures and principles referred to in Articles 18 to 20, 26, 28 and 34 are properly implemented. In particular, the Decision shall define the purpose of the new system, the access to and usage of the data, as well as time limits for storage and deletion of the data.

⁹ CZ Parliamentary reservation.

4. Europol may process data for the purpose of determining whether such data are relevant for its tasks, and can be included in the Europol Information System as referred to in Article 11, and the Analysis Work Files as referred to in Article 14 or other systems processing personal data established in accordance with paragraphs 2 and 3. The Management Board, acting on a proposal from the Director and, after having consulted the Joint Supervisory Body, shall determine the conditions related to the processing of such data, in particular with respect to the access and usage of the data, as well as time limits for the storage and deletion of the data that may not exceed six months, having due regard to the principles referred to in Article 26. This Management Board Decision shall be submitted to the Council for approval.

Article 11

Europol Information System

1. Europol shall maintain the Europol Information System.
2. Europol shall ensure compliance with the provisions of this Decision governing operation of the Information System. It shall be responsible for the proper working of the Information System in technical and operational respects and shall, in particular, take all necessary measures to ensure that the measures referred to in Articles 20, 28, 30 and 34 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 34 in respect of the data-processing equipment used within the territory of the Member State in question, for the review provided for in Article 20 and, in so far as required under the laws, regulations, administrative provisions and procedures of that Member State, for the proper implementation of this Decision in other respects.

Article 12
Content of the Europol Information System

1. The Europol Information System may be used to process only such data as are necessary for the performance of Europol's tasks. Data entered shall relate to:
 - (a) 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 in respect of which Europol is competent or who have been convicted of such an offence;
 - (b) persons in respect of whom there are factual indications or reasonable grounds under national law of the Member State concerned to believe that they will commit criminal offences in respect of which Europol is competent.

2. Data related to persons referred to in paragraph 1 may include only the following details:
 - (a) surname, maiden name, given names and any alias or assumed name;
 - (b) date and place of birth;
 - (c) nationality;
 - (d) sex;
 - (e) place of residence, profession and whereabouts of the person concerned;
 - (f) social security numbers, driving licences, identification documents and passport data;
and

- (g) where necessary, other characteristics likely to assist in identification, including any specific objective physical characteristics not subject to change such as dactyloscopic data and DNA profile (established from the non-coding part of DNA).
3. In addition to the data referred to in paragraph 2, the Europol Information System may also be used to process the following details concerning the persons referred to in paragraph 1:
- (a) criminal offences, alleged criminal offences and when, where and how they were (allegedly) committed;
 - (b) means which were or may be used to commit the criminal offences including information concerning legal persons;
 - (c) departments handling the case and their filing references;
 - (d) suspected membership of a criminal organisation;
 - (e) convictions, where they relate to criminal offences in respect of which Europol is competent;
 - (f) inputting party.

These data may also be included 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 the source of the data.

4. Additional information held by Europol or National Units concerning the 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 Article 4 (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 definitively dropped or if that person is definitively acquitted, the data relating to the case in respect of which either decision has been taken shall be deleted.

Article 13

Use of the Information System

1. National units, Liaison Officers and the Director, Deputy Directors or duly empowered Europol staff shall have the right to input data directly into the Europol Information System and retrieve them from it. Data may be retrieved by Europol where this is necessary for the performance of Europol's tasks in a particular case. Retrieval by the National Units and Liaison Officers shall be effected in accordance with the laws, regulations, administrative provisions and procedures of the accessing party, subject to any additional provisions contained in this Decision.
2. Only the party which entered the data may modify, correct or delete such data. Where another party has reason to believe that data as referred to in Article 12(2) are incorrect or wishes to supplement them, it shall immediately inform the inputting party. The inputting party shall examine such notification without delay and if necessary modify, supplement, correct or delete the data immediately.
3. Where the system contains data as referred to in Article 12(3) concerning a person, any party may enter additional data as referred to in that paragraph. Where there is an obvious contradiction between the data input, the parties concerned shall consult each other and reach agreement.

4. Where a party intends to delete altogether data as referred to in Article 12(2) which it has input on a person and data as referred to in Article 12(3) in respect of the same person have been input by other parties, responsibility in terms of data protection legislation pursuant to Article 28(1) and the right to modify, supplement, correct and delete such data pursuant to Article 12(2) shall be transferred to the next party to have entered data as referred to in Article 12(3) on that person. The party intending to delete shall inform the party to which responsibility in terms of data protection is transferred of its intention.
5. Responsibility for the permissibility of retrieval from, input into and modifications within the Information System shall lie with the retrieving, inputting or modifying party. It must be possible to identify that party. The communication of information between National Units and the competent authorities in the Member States shall be governed by national law.
6. In addition to the National Units and persons referred to in paragraph 1, competent authorities designated to this effect by the Member States may also query the Europol Information System. However, the result of the query will only indicate whether the requested data is available in the Europol Information System. Further information may then be obtained via the National Unit.
7. Information concerning the competent authorities designated in accordance with paragraph 6, including subsequent modifications, shall be transmitted to the General Secretariat of the Council, which shall publish the information in the Official Journal of the European Union.

Article 14
Analysis Work Files

1. Where this is necessary for the performance of its tasks, Europol may store, modify, and use data on criminal offences in respect of which it is competent, including data on the related criminal offences referred to in Article 4(3), in Analysis Work Files. Such Analysis Work Files may contain data on the following categories of persons:
 - (a) persons as referred to in Article 12(1);
 - (b) persons who might be called on to testify in investigations in connection with the offences under consideration or in subsequent criminal proceedings;
 - (c) 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;
 - (d) contacts and associates; and
 - (e) persons who can provide information on the criminal offences under consideration.

Processing of personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs or trade-union membership and the processing of data concerning health or sex life 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 above-mentioned sensitive data in breach of the aforementioned rules with regard to purpose.

The Council, acting by a qualified majority after consulting the European Parliament, shall adopt implementing rules for Analysis Work Files prepared by the Management Board, which has previously obtained the opinion of the Joint Supervisory Body, 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. Analysis Work Files shall be opened for the purposes of analysis defined as the assembly, processing or utilisation of data with the aim of helping criminal investigations. Each analysis project shall entail the establishment of an analysis group closely associating the following participants:
 - (a) analysts and other Europol staff designated by the Director;
 - (b) the Liaison Officers and/or experts of the Member States supplying the information or concerned by the analysis within the meaning of paragraph 4.

Only analysts shall be authorised to enter data into the file concerned and modify such data. All participants of the analysis group may retrieve data from the file.

3. At the request of Europol or on their own initiative, National Units shall, subject to Article 8(5), communicate to Europol all the information which it may require for the purpose of the Analysis Work File concerned. The Member States shall communicate such data only where processing thereof for the purposes of preventing, analysing or combating offences is also authorised by their national law. Depending on their degree of urgency, data from designated competent authorities may be routed directly to the Analysis Work Files in accordance with Article 8(2).

4. 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:

- (a) Member States which were the source of the information giving rise to the decision to open the Analysis Work 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;
 - (b) Member States which learn from consulting the index function referred to in Article 15 that they need to be informed and assert that need to know under the conditions laid down in paragraph 5.
5. The need to be informed may be claimed by authorised Liaison Officers. Each Member State shall nominate and authorise a limited number of such Liaison Officers.

A Liaison Officer shall claim the need to be informed as defined in paragraph 4 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 shall comprise three stages as follows:

- (a) 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;

- (b) if no agreement is reached, the Heads of the National Units concerned and the Director shall meet within three days and try to reach agreement;
 - (c) 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, association of that Member State shall be decided by consensus.
6. The Member State communicating an item of data to Europol shall be the sole judge of the degree of its sensitivity and variations thereof and will be entitled to determine the handling conditions of the data. Any dissemination or operational use of data communicated shall be decided on by the Member State that communicated the data to Europol. If it cannot be determined which Member State communicated the data to Europol, the decision on dissemination or operational use of data shall be taken by the participants in the analysis. A Member State or an associated expert joining an analysis in progress may not, in particular, disseminate or use the data without the prior agreement of the Member States initially concerned.
7. By way of derogation from paragraph 6, in those cases where Europol finds, after the time of inclusion of data in an Analysis Work File, that these data relate to a person or object on which data submitted by another Member State or third party was already included in the file, the Member State or third party concerned shall be informed of the link identified immediately, in accordance with Article 17.
8. Europol may invite experts of entities referred to in Articles 22(1) or 23(1) to be associated with the activities of an analysis group, where:

- (a) an agreement or working arrangement referred to in Articles 22(2) and 23(2) is in force between Europol and the entity, which contains appropriate provisions on the exchange of information, including the transmission of personal data, as well as on the confidentiality of exchanged information;
- (b) the association of the experts of the entity is in the interest of the Member States;
- (c) the entity is directly concerned by the analysis work; and
- (d) all participants agree on the association of the experts of the entity with the activities of the analysis group.

Under the conditions laid down under b), c) and d), Europol shall invite experts of the European Anti-Fraud Office to participate in the analysis group, if the analysis project concerns fraud or any other illegal activities affecting the financial interests of the European Communities.

The association of experts of an entity with the activities of an analysis group shall be subject to an arrangement between Europol and the entity. The rules governing such arrangements shall be determined by the Management Board.

Details of the arrangements between Europol and entities shall be sent to the Joint Supervisory Body referred to in Article 33 which may address any comments it deems necessary to the Management Board.

Article 15
Index Function

1. An index function shall be created by Europol for the data stored on the Analysis Work Files.
2. The Director, the Deputy Directors, duly empowered Europol staff, Liaison Officers and duly empowered members of National Units shall have the right to access the index function. The index function shall be such that it is clear to the person using it, from the data being consulted, whether an Analysis Work File contains data which are of interest for the performance of the tasks of the person using the index function.
3. Access to the index function shall be defined in such a way that it is possible to determine whether or not an item of information is stored in an Analysis Work File, but that it is not possible to establish connections or further conclusions regarding the content of the file.
4. The detailed procedures for the design of the index function, including conditions of access to the index function, shall be defined by the Management Board after obtaining the advice of the Joint Supervisory Body.

Article 16
Order opening an Analysis Work File

1. For every Analysis Work File, the Director shall specify in an order opening the file:
 - (a) the file name;
 - (b) the purpose of the file;
 - (c) the groups of persons on whom data are stored;

- (d) the nature of the data to be stored, and personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs or trade-union membership and the processing of data concerning health or sex life which are strictly necessary;
 - (e) the general context leading to the decision to open the file;
 - (f) the participants in the analysis group at the time of opening the file;
 - (g) the conditions under which the personal data stored in the file may be communicated, to which recipients and under what procedure;
 - (h) the time limits for examining the data and the duration of storage;
 - (i) the method of establishing the audit log.
2. The Management Board and the Joint Supervisory Body provided for in Article 33 shall immediately be informed by the Director of the order opening the file or any subsequent change of the elements referred to in paragraph 1 and shall receive the dossier. The Joint Supervisory Body may address any comments it deems necessary to the Management Board. The Director may request the Joint Supervisory Body to do this within a certain period of time.
3. The Analysis Work File shall be retained for a maximum of three years. Before the expiry of the three-year period Europol shall review the need for the continuation of the file. When it is strictly necessary for the purpose of the file, the Director may order the continuation of the file for a new period of three years. The Management Board and the Joint Supervisory Body provided for in Article 33 shall immediately be informed by the Director of the elements in the file justifying the strict necessity of its continuation. The Joint Supervisory Body shall address any comments it deems necessary to the Management Board. The Director may request the Joint Supervisory Body to do this within a certain period of time.

4. At any time the Management Board may instruct the Director to amend an opening order or close the Analysis Work File. The Management Board shall decide on what date any such amendment or closure will have effect.

CHAPTER III - COMMON PROVISIONS ON INFORMATION PROCESSING

Article 17

Duty to notify

Without prejudice to Article 14 (6) and (7), Europol shall promptly notify the National Units and their Liaison Officers if the National Units so request, of any information concerning their Member State and of connections identified between criminal offences in respect of which Europol is competent under Article 4. Information and intelligence concerning other serious crime, of which Europol becomes aware in the course of its duties, may also be communicated.

Article 18

Provisions on control of retrievals

Europol shall establish, in cooperation with the Member States, appropriate control mechanisms to allow the verification of the legality of retrievals from any of its automated data files used to process personal data and allow Member States access to the audit logs on request. The data thus collected shall be used only for this purpose by Europol and the supervisory bodies referred to in Articles 32 and 33 and shall be deleted after eighteen months, unless the data are further required for ongoing control. The details of such control mechanisms shall be decided upon by the Management Board following consultation with the Joint Supervisory Body.

Article 19
Rules on the use of data

1. Personal data retrieved from any of Europol's data processing files or communicated by any other appropriate mean shall be transmitted or used only by the competent authorities of the Member States in order to prevent and combat crimes in respect of which Europol is competent, and to prevent and combat other serious forms of crime. Europol shall use the data only for the performance of its tasks.

2. If, in the case of certain data, the communicating Member State or the communicating Third State or third body stipulates particular restrictions on use to which such data is subject in that Member State, Third State or third body, 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. In such cases, the data shall only be used after prior consultation of the communicating Member State whose interests and opinions shall be taken into account as far as possible.

3. Use of the data for other purposes or by authorities other than the national competent authorities shall be possible only after prior consultation of the Member State which transmitted the data in so far as the national law of that Member State permits.

Article 20

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 Europol 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 sentence of paragraph 1 may decide on continued storage of data until the next review which will take place after another period of three years 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. 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.
4. Deletion shall not occur if it would damage the interests of the data subject which requires protection. In such cases, the data shall be used only with the consent of the data subject.

Article 21

Access to data from other information systems

In so far as Europol is entitled under European Union, international or national legal instruments to gain computerised access to data from other information systems, either of a national or an international nature, Europol may retrieve personal data by such means if this is necessary for the performance of its tasks. The applicable provisions of such Union, international or national legal instruments shall govern the access to and use of this data by Europol, in so far as they provide for stricter rules on access and usage than this Decision.

CHAPTER IV - RELATIONS WITH PARTNERS

Article 22

Relations with Community or Union related institutions, bodies and agencies

1. Insofar as is relevant for the performance of its tasks, Europol may establish and maintain cooperative relations with the institutions, bodies and agencies set up by, or on the basis of, the Treaties establishing the European Communities and the Treaty on the European Union, in particular:
 - (a) Eurojust;
 - (b) the European Anti-Fraud Office (OLAF);
 - (c) the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex);
 - (d) the European Police College (CEPOL);
 - (e) the European Central Bank;
 - (f) the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA).
2. Europol shall conclude agreements or working arrangements with the entities referred to in paragraph 1. Such agreements or working arrangements may concern the exchange of operational, strategic or technical information, including personal data and classified information. Such an agreement or working arrangement may only be concluded after the approval by the Management Board which has previously obtained the opinion of the Joint Supervisory Body.

3. Prior to the entry into force of the agreement or working arrangement as referred to in paragraph 2, Europol may directly receive and use information, including personal data, from the entities referred to in paragraph 1, insofar as this is necessary for the legitimate performance of its tasks, and it may, under the conditions laid down in Article 23bis(1), directly transmit information, including personal data, to such entities, insofar as this is necessary for the legitimate performance of the recipient's tasks.
4. Transmission by Europol of classified information to the entities referred to in paragraph 1 shall be permissible only insofar as agreement on confidentiality exists between Europol and the recipient.

Article 23

Relations with Third States and organisations

1. Insofar as is required for the performance of its tasks, Europol may also establish and maintain cooperative relations with
 - (a) Third States;
 - (b) organisations such as:
 - international organisations and their subordinate bodies governed by public law;
 - other bodies governed by public law which are based on an agreement between two or more States; and
 - the International Criminal Police Organisation (Interpol).

2. Europol shall conclude agreements with the entities referred to in paragraph 1 which have been included in the list referred to in Article 25(1)(a). Such agreements may concern the exchange of operational, strategic or technical information, including personal data and classified information if transmitted via a designated contact point contained in the agreement referred to in paragraph 5 (b). Such agreements may only be concluded after the approval by the Council, after having consulted the Management Board and, as far as it concerns the exchange of personal data, after having obtained via the Management Board the opinion of the Joint Supervisory Body.
3. Prior to the entry into force of agreements as referred to in paragraph 2, Europol may directly receive information, including personal data and classified information insofar as this is necessary for the legitimate performance of its tasks.
4. Prior to the entry into force of the agreements as referred to in paragraph 2, Europol may under the conditions laid down in Article 23bis(1) directly transmit information, except for personal data and classified information, to these entities, insofar as this is necessary for the legitimate performance of the recipient's tasks.
- 4bis. Europol may under the conditions laid down in Article 23bis paragraph 1, directly transmit information, excluding personal data and classified data, to the entities referred to in paragraph 1 which are not included in the list referred to in Article 25(1)(a), insofar as this is absolutely necessary in individual cases for the purposes of preventing or combating criminal offences for which Europol is competent.
5. Europol may under the conditions laid down in Article 23bis paragraph 1, transmit personal data and classified information to the entities referred to in paragraph 1, where:
 - (a) this is necessary in individual cases for the purposes of preventing or combating criminal offences for which Europol is competent; and

- (b) Europol has concluded an agreement as referred to in paragraph 2 with the entity concerned which permits the transmission of such data on the basis of an assessment of the existence of an adequate level of data protection ensured by that entity.

5bis. Transmission by Europol of classified information to the entities referred to in paragraph 1 shall be permissible only insofar as agreement on confidentiality exists between Europol and the recipient.

6. By way of derogation from paragraph 5 and 5bis and without prejudice to Article 23bis(1), Europol may transmit personal data and classified information which it holds to the entities referred to in paragraph 1 where the Director considers the transmission of the data to be absolutely necessary to safeguard the essential interests of the Member States concerned within the scope of Europol's objectives or in the interests of preventing imminent danger associated with crime or terrorist offences. The Director shall in all circumstances consider the data-protection level applicable to the body in question with a view to balancing this data-protection level with those interests. The Director shall inform as soon as possible the Management Board and the Joint Supervisory Body of his decision and of the basis of the assessment of the adequacy of the level of data protection afforded by the concerned entities.

7. Prior to the transmission of personal data in application of paragraph 6 the adequacy of the level of data protection afforded by the concerned entities shall be assessed by the Director taking into account all the circumstances which play a part in the transmission of personal data, in particular:

- (a) the nature of the data;
- (b) the purpose for which the data is intended;
- (c) the duration of the intended processing;

- (d) the general or specific data protection provisions applying to the entity;
- (e) whether or not the entity has agreed to specific conditions required by Europol concerning the data.

Article 23bis

Transmission of data

1. If the data concerned have been transmitted to Europol by a Member State, Europol shall transmit them to the entities referred to in Article 22 (1) and Article 23 (1) only with the Member State's consent. The Member State may give its prior consent, in general terms or subject to specific conditions, to such transmission. That consent may be withdrawn at any time.

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

- (a) obstruct the proper performance of the tasks falling within a Member State's sphere of competence;
 - (b) jeopardise the security and public order of a Member State or otherwise prejudice its general welfare.
2. Europol shall be responsible for the legality of the transmission of data. Europol shall keep a record of all transmissions of data under this Article and of the grounds for such transmissions. Data shall only be transmitted if the recipient gives an undertaking that the data will be used only for the purpose for which it was transmitted.

Article 24

Information transmitted by private parties and persons

1. Insofar as this is necessary for the legitimate performance of its tasks, Europol may process information, including personal data, transmitted by private parties under the conditions stipulated in paragraph 2. For the purpose of this Decision 'private parties' shall mean entities and bodies established under the law of a Member State or a Third State, especially companies and firms, business associations, non-profit organisations and other legal persons governed by private law, which do not fall under Article 23 (1). 'Private persons' shall mean all natural persons.
2. Personal data transmitted by private parties may be processed by Europol under the following conditions:
 - (a) Personal data from private parties which were established under law of a Member State may only be processed by Europol if they are transmitted via the National Unit of that Member State in accordance with national law. Europol may not directly contact private parties in the Member States in order to retrieve information.
 - (b) Personal data from private parties which were established under law of a Third State with which Europol has concluded, in accordance with Article 23, a cooperation agreement allowing for the exchange of personal data, may only be transmitted to Europol via the contact point of that State as identified by, and in accordance with, the cooperation agreement in force.
 - (c) Personal data transmitted by private parties which were established under law of a Third State with which Europol has no cooperation agreement allowing for the exchange of personal data, may only be processed by Europol if:

- The private party is included in the list referred to in Article 25 paragraph 2, and
- Europol and the private party have concluded a Memorandum of Understanding on the transmission of information, including personal data, confirming the legality of the collection and transmission of the personal data by the private party and specifying that the personal data transmitted may only be used for the legitimate performance of Europol's tasks. Such a Memorandum of Understanding may only be concluded after the approval by the Management Board which has previously obtained the opinion of the Joint Supervisory Body.

If the transmitted data affects interests of a Member State, Europol shall immediately inform the National Unit of the Member State concerned.

3. In addition to the processing of data from private parties according to paragraph 2, Europol may directly retrieve and process data, including personal data, from publicly available sources, such as media and public data and commercial intelligence providers according to the data protection provisions of this Decision. In accordance with Article 17 Europol shall forward all relevant information to the National Units.

3bis. Information, including personal data, transmitted by private persons may be processed by Europol if it has been received via a National Unit in accordance with national law or via the contact point of a Third State with which Europol has concluded a cooperation agreement according to Article 23 of this Decision. If Europol receives information, including personal data, from a private person residing in a Third State with which Europol has no cooperation agreement, Europol shall only forward it to the Member State or the Third State concerned **with which Europol has concluded a cooperation agreement according to Article 23 of this Decision.** Europol may not directly contact private persons in order to retrieve information.

4. Personal data transmitted to or retrieved by Europol under paragraph 2(c) may only be processed for the purpose of their inclusion in the Europol Information System as referred to in Article 11, and the Analysis Work Files as referred to in Article 14 or other systems processing personal data established in accordance with paragraphs 2 and 3 of Article 10, under the condition that such data is related to other data already entered in one of the aforementioned systems or such data is related to a previous query by a National Unit within one of the aforementioned systems.

The responsibility for data processed by Europol, which has been transmitted under the conditions laid down in paragraphs 2(b), (c) and 3 above, as well as the information transmitted via the contact point of a Third State with which Europol has concluded a cooperation agreement according to Article 23 of this Decision, shall lie with Europol in accordance with Article 28 (1) (b) of this Decision.

5. The Director shall present a comprehensive report to the Management Board with regard to the application of the current article two years after the date of applicability of this Decision. On advice of the Joint Supervisory Body or on its own initiative the Management Board may take any measure deemed appropriate according to Article 36 (8)(b).

Article 25

Implementing rules governing Europol's relations

1. The Council, acting by a qualified majority¹⁰ after consulting the European Parliament, shall determine:
 - (a) a list of the Third States and organisations referred to in Article 23 (1) with which Europol shall conclude agreements. The list shall be prepared by the Management Board and reviewed when necessary; and

¹⁰ CZ maintained a Parliamentary reservation.

- (b) the implementing rules governing the relations of Europol with the entities referred to in Articles 22(1) and 23(1), including the communication of personal data and classified information. The Council Decision shall be prepared by the Management Board which has previously obtained the opinion of the Joint Supervisory Body.
2. The Management Board shall determine and review, when necessary, a list of private parties with which Europol may conclude Memoranda of Understanding according to Article 24 (2) (c), as well as adopt the rules governing the content and procedure for a conclusion of such Memoranda of Understanding after having obtained the opinion of the Joint Supervisory Body.

CHAPTER V - DATA PROTECTION AND DATA SECURITY

Article 26 *Standard of data protection*

Without prejudice to specific provisions of this Decision, Europol shall take account of the principles of the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data 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 observe these principles in the processing of personal data, included in respect of automated and non-automated data held in the form of data files, especially any structured set of personal data accessible in accordance with specific criteria.

Article 27 *Data Protection Officer*

1. The Management Board shall **appoint**, upon the proposal of the Director, a Data Protection Officer, who shall be a member of the staff. In the performance of his or her duties, he or she shall act independently.
2. The Data Protection Officer shall in particular have the following tasks:
 - (a) ensuring, in an independent manner, lawfulness and compliance with the provisions of this Decision concerning the processing of personal data, including the processing of personal data on Europol staff;
 - (b) ensuring that a written record of the transmission and receipt of personal data is kept in accordance with this Decision;

- (c) ensuring that data subjects are informed of their rights under this Decision at their request;
 - (d) cooperate with Europol staff responsible for procedures, training and advice on data processing;
 - (e) cooperate with the Joint Supervisory Body;
 - (f) preparing an annual report and communicating this report to the Management Board and to the Joint Supervisory Body.
3. In the performance of his or her tasks, the Data Protection Officer shall have access to all the data processed by Europol and to all Europol premises.
4. If the Data Protection Officer considers that the provisions of this Decision concerning the processing of personal data have not been complied with, he or she shall inform the Director requiring him or her to resolve the non-compliance within a specified time.
- If the Director does not resolve the non-compliance of the processing within the specified time, the Data Protection Officer shall inform the Management Board and shall agree with the Management Board a specified time for a response.
- If the Management Board does not resolve the non-compliance of the processing within the specified time, the Data Protection Officer shall refer the matter to the Joint Supervisory Body.
5. Further implementing rules concerning the Data Protection Officer shall be adopted by the Management Board. The implementing rules shall in particular concern selection and dismissal, tasks, duties and powers and safeguards for the independence of the Data Protection Officer.

Article 28
Responsibility in data protection matters

1. The responsibility for data processed 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:
 - (a) the Member State which input or otherwise communicated the data;
 - (b) Europol in respect of data communicated to Europol by third parties, including data communicated by private parties in accordance with Article 24(2)(b)(c) and Article 24(3) as well as data communicated via the contact point of a Third State with which Europol has concluded a cooperation agreement according to Article 23 of this Decision or which result from analyses conducted by Europol.
2. Data which has been transmitted to Europol but not yet included in one of Europol's data files shall remain under the data protection responsibility of the party transmitting the data. However, Europol shall be responsible for ensuring the security of the data in accordance with Article 34(2) of this Decision in that until such data have been included in a data file, they may only be accessed by authorised Europol staff for the purpose of determining whether they can be processed at Europol, or by authorised officials of the party which supplied the data. If Europol, after appraisal, has reason to assume that data supplied are inaccurate or no longer up-to-date, it shall inform the party which supplied the data.
3. In addition, subject to other provisions in this Decision, Europol shall be responsible for all data processed by it.
4. If Europol has evidence that data inputted in one of its systems referred to in Chapter II of this Decision is factually incorrect or has been unlawfully stored it shall inform the Member State or other party involved thereof.

5. 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 29

Data subject's right of access

1. Any person shall be entitled, at reasonable intervals, to obtain information on whether personal data relating to him or her is processed by Europol, to have communication to him or her of such data in an intelligible form, or to have such data checked, in all cases under the conditions laid down in this Article.
2. Any person wishing to exercise his or her rights under this Article may make a request to that effect without excessive costs in the Member State of his or her choice, to the authority appointed for that purpose in that Member State. That authority shall refer the request to Europol without delay, and in any case within one month of receipt.
3. The request shall be answered by Europol without undue delay and in any case within three months following its receipt by Europol in accordance with this Article.
- 3bis. Europol shall consult the competent authorities of Member States concerned before deciding on its response to a request under paragraph 1. A decision on access to data shall be conditional upon close cooperation between Europol and the Member States directly concerned by the communication of such data. In any case where a Member State objects to Europol's proposed response, it shall notify the grounds thereof to Europol.
4. The provision of information in response to a request under paragraph 1 shall be refused to the extent that such refusal is necessary to:
 - (a) enable Europol to fulfil its tasks properly;

- (b) protect security and public order in the Member States or to prevent crime;
- (c) guarantee that any national investigation will not be jeopardised;
- (d) protect the rights and freedoms of third parties.

When assessing the applicability of an exemption, the interests of the person concerned must be taken into account.

5. If the provision of information in response to a request under paragraph 1 is refused, Europol shall notify the person concerned that it has carried out checks, without giving any information which might reveal to him or her whether or not personal data concerning him or her are processed by Europol.
6. Any person shall have the right to request the Joint Supervisory Body, at reasonable intervals, to check whether the manner in which his or her personal data have been collected, stored, processed and used by Europol is in compliance with this Decision concerning the processing of personal data. The Joint Supervisory Body shall notify the person concerned that it has carried out checks, without giving any information which might reveal to him or her whether or not personal data concerning him or her are processed by Europol.

Article 30

Data subject's right to correction and deletion of data

1. Any person shall have the right to ask Europol to correct or delete incorrect data concerning him or her. If it emerges, either on the basis of the exercise of this right or otherwise, that data held by Europol which have been communicated to it by third parties or which are the result of its own analyses are incorrect or that their input or storage contravenes this Decision, Europol shall correct or delete such data.

2. If data that are incorrect or processed in contravention to this Decision have been transmitted directly to Europol by Member States, the Member States concerned shall be obliged to correct or delete such data in collaboration with Europol.
3. If incorrect data have been 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 Decision or if they result from their being entered, taken over or stored in an incorrect manner or in breach of the provisions of this Decision by Europol, Europol shall be obliged to correct or delete the data in collaboration with the Member States concerned.
4. In the cases referred to in paragraphs 1, 2 and 3, the Member States or third parties which have received the data shall be notified forthwith. The recipient Member States and the third parties shall also correct or delete these data. Where deletion is not possible the data shall be blocked to prevent any future processing.
5. Europol shall inform the enquirer in writing without undue delay and in any case within three months that data concerning him or her have been corrected or deleted.

Article 31

Appeals

1. In its reply to a request for a check, for access to data, or a request for correction and deletion of data, Europol shall inform the enquirer that he or she may appeal to the Joint Supervisory Body, if he or she is not satisfied with the decision. The enquirer may also refer the matter to the Joint Supervisory Body if there has been no response to his or her request within the time limits laid down in Articles 29 or 30.

2. If the enquirer lodges an appeal to the Joint Supervisory Body, the appeal shall be examined by that body.
3. Where the appeal relates to a decision as referred to in Articles 29 or 30, the Joint Supervisory Body shall consult the national supervisory bodies or the competent judicial body in the Member State which was the source of the data or the Member State directly concerned. The decision of the Joint Supervisory Body which may extend to a refusal to communicate any information shall be taken in close cooperation with the national supervisory body or competent judicial body.
4. Where the appeal relates to access to data entered by Europol in the Europol Information System, data stored in the Analysis Work Files or any other system established by Europol for the processing of personal data pursuant to Article 10, and in the event of persistent objections from Europol, the Joint Supervisory Body shall only be able to overrule such objections by a majority of two-thirds of its members after having heard Europol and the Member State or Member States as referred to in Article 29 (3bis). If there is no such majority, the Joint Supervisory Body shall notify the refusal to the enquirer, without giving any information which might reveal the existence of any personal data about the enquirer.
5. Where the appeal relates to the checking of data entered by a Member State in the Europol Information System, data stored in the Analysis Work Files or any other system established by Europol for the processing of personal data pursuant to Article 10, 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 the existence of any personal data about the enquirer.

6. Where the appeal relates to the checking of data entered by Europol in the Europol Information System or of data stored in the Analysis Work Files or any other system established by Europol for the processing of personal data pursuant to Article 10, 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 the existence of any personal data about the enquirer.

Article 32

National supervisory body

1. Each Member State shall designate a national supervisory body 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 such input, retrieval or communication 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 Europol Information System or in any other system established by Europol for the processing of personal data pursuant to Article 10 in accordance with the relevant national procedures.

For the purpose of exercising their supervisory function, 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 and the activities of Liaison Officers, in so far as such activities are of relevance to the protection of personal data. They shall also keep the Joint Supervisory Body informed of any actions they take with respect to Europol.

2. Any person shall have the right to request the national supervisory body to ensure that the entry or communication to Europol of data concerning him or her 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 in which the request is made.

Article 33

Joint Supervisory Body

1. An independent Joint Supervisory Body shall be set up to review, in accordance with this Decision, the activities of Europol in order to ensure that the rights of the individual are not violated by the storage, processing and usage 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 a maximum of two members or representatives, where appropriate assisted by alternates, of each of the independent national supervisory bodies 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 shall assist the Joint Supervisory Body in the performance of the latter's tasks. In doing so, it shall in particular:
 - (a) supply the information the supervisory body requests, give it access to all documents and paper files as well as access to the data stored in its data files;

- (b) allow the supervisory body free access at all times to all its premises;
 - (c) implement the Joint Supervisory Body's decisions on appeals.
3. The Joint Supervisory Body shall be competent for the examination of questions relating to implementation and interpretation in connection with Europol's activities as regards the processing and usage 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 of access, as well as for drawing up harmonised proposals for common solutions to existing problems.
 4. [...]
 5. If the Joint Supervisory Body identifies any violations of the provisions of this Decision in the storage, processing or utilisation of personal data, it shall make any complaints it deems necessary to the Director and shall request him to reply within a specified time limit. The Director shall keep the Management Board informed of the entire procedure. If it is not satisfied with the response given by the Director to its request, the Joint Supervisory Body shall refer the matter to the Management Board.
 6. For the fulfilment of its tasks and to contribute in improving consistency in the application of the rules and procedures for data processing, the Joint Supervisory Body shall cooperate as necessary with other supervisory authorities.
 7. The Joint Supervisory Body shall draw up activity reports at regular intervals. Such reports shall be forwarded to the European Parliament and to the Council. The Management Board shall have the opportunity to express comments, 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.

8. The Joint Supervisory Body shall adopt its rules of procedure by a two-thirds majority, and shall submit them to the Council for approval. The Council shall act by a qualified majority.
9. The Joint Supervisory Body shall set up an internal 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 Article 31 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.
10. The Joint Supervisory Body may also set up one or more other committees.
11. The Joint Supervisory Body shall be consulted on that part of the Europol budget which concerns it. Its opinion shall be annexed to the draft budget in question.
12. The Joint Supervisory Body shall be assisted by a secretariat, the tasks of which shall be defined in the rules of procedure.

Article 34

Data security

1. Europol shall take the necessary technical and organisational measures to ensure the implementation of this Decision. Measures shall be considered 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:
 - (a) deny unauthorised persons access to data processing equipment used for processing personal data (equipment access control);

- (b) prevent the unauthorised reading, copying, modification or removal of data media (data media control);
- (c) prevent the unauthorised input of data and the unauthorised inspection, modification or deletion of stored personal data (storage control);
- (d) prevent the use of automated data processing systems by unauthorised persons using data communication equipment (user control);
- (e) ensure that persons authorised to use an automated data processing system only have access to the data covered by their access authorisation (data access control);
- (f) ensure that it is possible to verify and establish to which bodies personal data may be or have been transmitted using data communication equipment (communication control);
- (g) ensure that it is possible to verify and establish which personal data have been input into automated data or processing systems and when and by whom the data were input (input control);
- (h) prevent unauthorised reading, copying, modification or deletion of personal data during transfers of personal data or during transportation of data media (transport control);
- (i) ensure that installed systems may, in case of interruption, be immediately restored (recovery);
- (j) 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).

CHAPTER VI - ORGANISATION

Article 35

Organs of Europol

The organs of Europol shall be:

- (a) the Management Board;
- (b) the Director.

Article 36

Management Board

1. The Management Board shall be composed of one representative of each Member State and one from the Commission. Each member of the Management Board shall have one vote. 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.
2. The Chairperson and the Deputy Chairperson of the Management Board shall be selected by and from within the group of three Member States who have jointly prepared the Council 18 month programme. They shall serve for the 18 month period corresponding to that Council programme. During this period the Chairperson shall no longer act as a representative of its respective Member State in the Management Board. The Deputy shall *ex officio* replace the Chairperson in the event of his/her being prevented from attending to his/her duties.
- 2a. The Chairperson shall be responsible for the efficient operation of the Management Board within the framework of the objectives as set out in Article 36(8) ensuring a specific focus on strategic issues and Europol's principle tasks as laid down in Article 5(1).

- 2b. The Chairperson shall be supported by the Secretariat of the Management Board. The Secretariat shall in particular:
- (a) be closely and continually involved in organising, coordinating and ensuring the coherence of the Management Board's work. Under the responsibility and guidance of the Chairperson, it shall assist the latter in seeking solutions;
 - (b) provide the Management Board with the administrative support necessary for it to carry out its duties.
3. The Director shall participate in the meetings of the Management Board, without the right to vote.
4. Members of the Management Board or their alternates and the Director may be accompanied by experts.
5. The Management Board shall meet at least twice a year.
6. [...]
7. The Management Board shall act by a two thirds majority of its members [unless otherwise stipulated in this Decision.]¹¹
8. The Management Board shall:
- (a) adopt a strategy for Europol, which includes benchmarks to measure whether the objectives set have been reached;

11 The final wording of this paragraph is linked to the type of decision making retained in the various Articles of this draft Council Decision.

- (b) oversee the Director's performance including the implementation of Management Board decisions;
- (c) take any decision or implementing measures in accordance with the provisions of this Decision;
- (d) adopt the implementing rules applicable to Europol staff, on a proposal from the Director and after seeking agreement from the Commission;
- (e) adopt the financial regulation and appoint the Accounting Officer in conformity with Commission Regulation (EC, Euratom) No 2343/2002 , after consulting the Commission;
- (ebis) establish the Internal Audit Function **and appoint its auditing staff, who shall be members of Europol. Further implementing rules concerning the internal audit function shall be adopted by the Management Board. The implementing rules should, in particular, cover selection, dismissal, tasks, duties, powers and safeguards for the independence of the function.** The Internal Audit Function shall be solely accountable to the Management Board and shall have access to all documentation necessary in exercising its function;
- (f) adopt a list of at least three candidates for the post of Director and the Deputy Directors to be submitted to the Council;
- (g) be responsible for any other tasks assigned to it by the Council particularly in provisions for the implementation of this Decision;
- (h) establish its rules of procedure, **including provisions providing for the independence of the Secretariat.**

9. The Management Board shall adopt each year

- (a) the draft budget estimate and the preliminary draft budget to be submitted to the Commission, including the establishment plan, and the final budget;
- (b) a work programme for Europol's future activities taking into account Member States' operational requirements and budgetary and staffing implications for Europol, after the Commission has delivered an opinion;
- (c) a general report on Europol's activities during the previous year including the results achieved on the priorities set by the Council.

These documents shall be submitted to the Council for endorsement. They shall also be forwarded by the Council to the European Parliament for information.

9bis. Within 4 years after this Decision applies and every four years thereafter, the Management Board shall commission an independent external evaluation of the implementation of this Decision as well as of the activities carried out by Europol.

The Management Board shall issue specific terms of reference to this effect.

The report of the evaluation shall be forwarded to the Commission, the European Parliament and the Council.

10. The Management Board may decide to establish working groups. The rules governing the creation and functioning of the working groups shall be laid down in its Rules of Procedure.

11. The Management Board shall exercise the powers laid down in Article 38(3) in respect of the Director, without prejudice to Article 37(1) and (7).

Article 37

Director

1. Europol shall be headed by a Director appointed by the Council, acting by a qualified majority, from a list of at least three candidates presented by the Management Board, for a four-year period extendable once.
2. The Director shall be assisted by three Deputy Directors appointed for a four-year period extendable once, in accordance with the procedure laid down in paragraph 1. Their tasks shall be defined in greater detail by the Director.
3. The Management Board shall establish rules regarding the selection of candidates for the position of Director or Deputy Director. Such rules shall be approved by the Council, acting by a qualified majority prior to their entry into force.
4. The Director shall be responsible for:
 - (a) performance of the tasks assigned to Europol;
 - (b) day-to-day administration;
 - (c) exercising, in respect of the staff and Deputy Directors without prejudice to paragraphs 2 and 7, the powers laid down in Article 38(3);

- (d) preparing and implementing the Management Board's decisions and responding to requests from the Management Board;
- (da) supporting the Chairperson of the Management Board in the preparation of the Management Board meetings;
- (e) drawing up the preliminary draft budget, draft establishment plan and draft work programme;
- (ea) elaborating the report referred to in Article 36(9)(c);
- (f) implementing Europol's budget;
- (g) on a regular basis, informing the Management Board on the implementation of the priorities defined by the Council, as well as on Europol's external relations;
- (h) [...]
- (i) establishing and implementing, in cooperation with the Management Board, an effective and efficient monitoring and evaluation procedure relating to Europol's performance in terms of achieving its objectives. The Director shall report regularly to the Management Board on the results of this monitoring;
- (j) all other tasks assigned to the Director in this Decision.

5. The Director shall be accountable to the Management Board in respect of the performance of his duties.
6. The Director shall be Europol's legal representative.
7. The Director and the Deputy Directors may be dismissed by a decision of the Council, acting by a qualified majority, after obtaining the opinion of the Management Board. The Management Board shall establish the rules to be applied in such cases. Such rules shall be approved by the Council, acting by a qualified majority prior to their entry into force.

Article 38

Staff

1. The Staff Regulations of officials of the European Communities, the Conditions of employment of other servants of the European Communities and the rules adopted jointly by the institutions of the European Communities for the purposes of the application of those Staff Regulations and Conditions of employment shall apply to the Director, the Deputy Directors and to the Europol staff engaged after the date of applicability of this Decision.
2. For the purpose of implementing Regulation (EEC, Euratom, ECSC) No 259/68 of the Council of 29 February 1968 laying down the Staff Regulations of officials and the Conditions of employment of other servants of the European Communities and instituting special measures temporarily applicable to officials of the Commission, Europol is an agency within the meaning of Article 1a(2) of the Staff Regulations of officials of the European Communities.
3. The powers conferred on the appointing authority by the Staff Regulations and on the authority authorised to conclude contracts by the Conditions of employment of other servants shall be exercised by Europol in respect of its staff and of the Director in accordance with the provisions of Articles 36(11) and 37(4)(c) of this Decision.

4. The staff of Europol shall consist of temporary staff and/or contract staff. The Management Board of Europol shall give its consent on a yearly basis in so far as the Director intends to grant contracts of indefinite duration. The Management Board shall decide which temporary posts foreseen in the establishment plan can only be filled by staff engaged from the competent national authorities within the meaning of Article 3 of this Decision. Staff recruited to occupy such posts shall be temporary agents under Article 2 a) of the Conditions of Employment of other Servants and may only be awarded fixed-term contracts renewable once for a fixed period.
5. Member States may second national experts to Europol. For this case, the Management Board shall adopt the necessary implementing arrangements.
- 5a. Europol shall apply the provisions of Regulation (EC) No 45/2001 to the processing of personal data relating to Europol staff.

CHAPTER VII - CONFIDENTIALITY ISSUES

Article 39

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 Decision. To this end the Council, acting by a qualified majority after consulting the European Parliament, shall adopt appropriate rules on confidentiality, prepared by the Management Board. Such rules shall include provisions on the cases in which Europol may exchange information subject to the requirement of confidentiality with third parties.
2. Where Europol intends to entrust persons with a sensitive activity, Member States shall undertake to arrange, at the request of the Director, 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. Those results 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. The Management Board shall adopt rules for the security clearance of Europol staff. The Management Board shall be regularly informed by the Director on the state of security screening of Europol staff.

Article 40

Obligation of discretion and confidentiality

1. The members of the Management Board, the Director, 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. The members of the Management Board, the Director, 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 unauthorised 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 referred to 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. The members of the Management Board, the Director, the Deputy Directors, employees of Europol and Liaison Officers, as well as other persons under the obligation provided for in paragraph 2, shall 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 Management Board or the Director, depending on the case, shall approach the judicial body or any other competent body with a view to ensuring that the necessary measures under the national law applicable to the body approached are taken.

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 it 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 referred to in paragraph 2 asked to give evidence shall need 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. The obligation to seek permission to give evidence shall apply even after leaving office or employment or after termination of activities.

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 involves a Member State, the position of that Member State concerning the evidence shall be sought before permission is granted.

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.

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 classified material.

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.

CHAPTER VIII - BUDGET PROVISIONS¹²

Article 41

Budget

1. The revenues of Europol shall consist, without prejudice to other types of income, of a subsidy from the Community entered in the general budget of the European Union (Commission section) as from 1 January 2010 or the date of application of Regulation XX as referred to in Article 50 (1), whichever is the later. The financing of Europol is subject to an agreement by the budgetary authority as provided for in the Interinstitutional Agreement.
2. The expenditure of Europol shall include the staff, administrative, infrastructure and operational expenses.
3. The Director shall draw up a draft estimate of the revenues and expenditure of Europol for the following financial year and shall forward it to the Management Board together with a draft establishment plan. The draft establishment plan shall consist of posts of a permanent or temporary nature and a reference to national experts seconded, and shall state the number, grade and category of staff employed by Europol for the financial year in question.
4. Revenue and expenditure shall be in balance.
5. The Management Board shall adopt the draft estimate, including the draft establishment plan accompanied by the preliminary work programme, and forward them by 31 March of each year, at the latest, to the Commission. If the Commission has objections to the draft estimate, it shall inform the Management Board within 30 days following receipt thereof.

¹² AT, DE, NL and SE could lift their reservation provided that the Commission gives satisfactory answers to the additional questions regarding on budget neutrality.

6. The estimate shall be forwarded by the Commission to the European Parliament and the Council (hereinafter referred to as the budgetary authority) together with the preliminary draft budget of the European Union.
7. On the basis of the estimate, the Commission shall enter in the preliminary draft general budget of the European Union, which it shall place before the budgetary authority in accordance with Article 272 of the Treaty, the estimates it deems necessary for the establishment plan and the amount of the subsidy to be charged to the general budget.
8. The budgetary authority shall authorise the appropriations for the subsidy to Europol and the establishment plan when adopting the general budget of the European Union.
9. The Management Board shall adopt the Europol budget and the establishment plan. They shall become definitive following the final adoption of the general budget of the European Union. Where appropriate, they shall be adjusted accordingly, through adoption of a revised budget.
10. Any modification to the budget, including the establishment plan, shall follow the procedure laid down in paragraphs 5 to 9.
11. The Management Board shall, as soon as possible, notify the budgetary authority of its intention to implement any project that may have significant financial implications for the funding of its budget, in particular any projects relating to property such as the rental or purchase of buildings. It shall inform the Commission thereof. Where a branch of the budgetary authority notifies its intention to deliver an opinion, it shall forward its opinion to the Management Board within a period of six weeks from the date of notification of the project.

Article 42
Implementation and control of the budget

1. The Director shall implement Europol's budget.
2. By 28 February at the latest following each financial year, Europol's Accounting Officer shall communicate the provisional accounts to the Commission's Accounting Officer together with a report on the budgetary and financial management for that financial year. The Commission's Accounting Officer shall consolidate the provisional accounts of the institutions and decentralised bodies in accordance with Article 128 of Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities (hereinafter referred to as the Financial Regulation).
3. By 31 March at the latest following each financial year, the Commission's Accounting Officer shall forward Europol's provisional accounts to the Court of Auditors, together with a report on the budgetary and financial management for that financial year. The report on the budgetary and financial management for that financial year shall also be forwarded to the European Parliament and the Council.
4. On receipt of the Court of Auditors' observations on Europol's provisional accounts, pursuant to Article 129 of the Financial Regulation, the Director shall draw up Europol's final accounts under his own responsibility and forward them to the Management Board for an opinion.
5. The Management Board shall deliver an opinion on Europol's final accounts.
6. By 30 June at the latest following each financial year, the Director shall send the final accounts, together with the opinion of the Management Board, to the Commission, the Court of Auditors, the European Parliament and the Council.

7. The final accounts shall be published.
8. The Director shall send the Court of Auditors a reply to its observations by 30 September at the latest. He shall also send a copy of this reply to the Management Board.
- 8a. The Director shall submit to the European Parliament, at the latter's request, any information required for the smooth application of the discharge procedure for the financial year in question, as laid down Article 146(3) of the Financial Regulation.
9. The European Parliament, taking into account a recommendation from the Council acting by a qualified majority, shall, before 30 April of year $n + 2$, give a discharge to the Director in respect of the implementation of the budget for year n .

Article 43

Financial regulation

The financial regulation applicable to Europol shall be adopted by the Management Board after having consulted the Commission. They may not depart from Commission Regulation (EC, Euratom) No 2343/2002 of 23 December 2002 on the framework Financial Regulation for the bodies referred to in Article 185 of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities, (the “Framework Regulation”)¹³, unless specifically required for Europol’s operation. The prior consent of the Commission shall be required for the adoption of any rules which derogate from the Regulation (EC, Euratom) No 2343/2002. The budgetary authority shall be informed of these derogations.

¹³ OJ L 357, 31.12.2002, p.72

Article 44
Monitoring and evaluation

[...]

CHAPTER IX - MISCELLANEOUS PROVISIONS

Article 45

Rules concerning access to Europol documents

On the basis of a proposal by the Director, and not later than six months after this Decision is applicable, the Management Board shall adopt rules concerning access to Europol documents, taking into account the principles and limits set out in Regulation (EC) No 1049/2001 of the European Parliament and of the Council¹⁴.

Article 45a

EU classified information

Europol shall apply the security principles and minimum standards set out in Council Decision 2001/264/EC of 19 March 2001 adopting the Council's security regulations¹⁵ regarding EU classified information.

Article 46

Languages

1. Regulation No. 1 of 15 April 1958 determining the languages to be used in the European Economic Community¹⁶ shall apply to Europol.
2. The Management Board shall decide on the internal language arrangements of Europol¹⁷.

14 OJ L 145, 31.5.2001, p. 43.

15 OJ L 101, 11.4.2001, p.1

16 OJ L 17, 6.10.1958, p. 385/58. Regulation as last amended by the Council Regulation (EC) No 1791/2006 (OJ L 363, 20.12.2006, p.1)

17 The French delegation suggested, referring to Art. 36(7), that the Management Board decision on the internal language arrangements of Europol should be taken by unanimity.

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

Article 47

Informing the European Parliament

The Presidency of the Council, the Chairperson of the Management Board and the Director shall appear before the European Parliament at its request with a view to discuss matters relating to Europol taking into account the obligations of discretion and confidentiality.

Article 48

Combating fraud

The rules laid down by Regulation (EC) No 1073/1999 of the European Parliament and of the Council of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF)¹⁸ shall apply to Europol. The Management Board, on the basis of the proposal by the Director, and not later than six months after this Decision is applicable, shall adopt the necessary implementing measures which may exclude operational data from the scope of OLAF's investigations.

¹⁸ OJ L 136, 31.5.1999, p. 1.

Article 49
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 the Director, the members of the Management Board, the Deputy Directors, employees of Europol 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 approval of the Management Board.

Article 50
Privileges and immunities

1. The Protocol on the Privileges and Immunities of the European Communities and Regulation XX 2008 (adopted on the basis of Article 16 of the Protocol on the Privileges and Immunities of the European Communities) shall apply to the Director and Deputy Directors of Europol and to its staff.
2. [...]
3. The Protocol on the Privileges and Immunities of the European Communities shall apply to Europol.
4. The Kingdom of the Netherlands and the other Member States shall agree 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.

Article 51

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 shall 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 concerned. A Member State may not plead that another Member State or Europol had transmitted inaccurate data in order to avoid its liability under its national legislation vis-à-vis an injured party.
2. If legal or factual errors occurred as a result of erroneous communication of data or of failure to comply with the obligations laid down in this Decision 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 to the injured party, on request, the amounts paid as compensation pursuant to paragraph 1 unless the data were used in breach of this Decision by the Member State in the territory of which the damage was caused.
3. Any dispute between that Member State and Europol or another Member State over the principle or amount of the repayment shall be referred to the Management Board, which shall settle the matter by a two thirds majority.

Article 52

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 51, to make good any damage caused through the fault of its organs, or of its staff 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 Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters¹⁹.

Article 53

Liability with regard to Europol's participation in joint investigation teams

1. The Member State in the territory of which damage is caused by Europol staff operating in accordance with Article 6 in that Member State during their assistance in operational measures shall make good such damage under the conditions applicable to damage caused by its own officials.
2. Unless otherwise agreed by the Member State concerned, Europol shall reimburse in full any sums that Member State has paid to the victims or persons entitled on their behalf for damage referred to in paragraph 1. Any dispute between that Member State and Europol over the principle or amount of repayment shall be referred to the Management Board, which shall settle the matter.

¹⁹ OJ L 12, 16.1.2001, p. 1.

CHAPTER X -TRANSITIONAL PROVISIONS

Article 54

General legal succession

1. This Decision does not affect the legal force of agreements concluded by Europol as established by the Europol Convention prior to the applicability of this Decision.
2. Paragraph 1 shall apply in particular to the Headquarters Agreement concluded on the basis of Article 37 of the Europol Convention, as well as the agreements between the Kingdom of the Netherlands and the other Member States established on the basis of Article 41(2) of the Europol Convention and to all international agreements, including their provisions on exchange of information, and to contracts concluded by, liabilities incumbent on, and properties acquired by Europol, as established by the Europol Convention.

Article 55

Director and Deputy Directors

1. The Director and Deputy Directors appointed on the basis of Article 29 of the Europol Convention, shall, for the remaining periods of their terms of office, be the Director and Deputy Directors within the meaning of Article 37 of this Decision. If their terms of office end within one year after the date this Decision is applicable, their terms shall automatically be extended until one year after the date on which this Decision is applicable.

2. In the event that the Director or one or more of the Deputy Directors are unwilling or unable to act in accordance with paragraph 1, the Management Board shall appoint an interim Director or interim Deputy Director(s) as required for a maximum period of 18 months, pending the appointments provided for in Article 37(1) and (2).

Article 56

Staff²⁰

1. By way of derogation from Article 38, all employment contracts concluded by Europol, as established by the Europol Convention **and in force at the date of applicability** of this Decision will be honoured **until their expiry date and cannot be renewed on the basis of the Europol staff regulations after the date of applicability**.
2. All members of staff under contracts as referred to in paragraph 1 shall be offered the possibility to conclude contracts **of temporary agent** under Article 2(a) of the Conditions of Employment of other Servants of the Communities laid down in Regulation (EEC, Euratom, ECSC) No 259/68²¹ (hereinafter referred to as CEOS) at the various grades as set out in the establishment plan **or of contract agent under Article 3a of these same Conditions**.

To that end an internal selection process, limited to staff **who have a contract with Europol at the date of applicability** of this Decision, will be **carried out after the entry into force and** within two years **of the date of applicability** of this Decision by the authority authorised to conclude contracts in order to check the **ability**, efficiency and integrity of those to be engaged.

20 NL scrutiny reservation

21 OJ L 56, 4.3.1968, p. 1. Regulation as last amended by Regulation (EC, Euratom) No 31/2005 (OJ L 8, 12.1.2005, p. 1).

Depending on the type and level of functions performed, successful candidates will be offered **either a contract of temporary agent or a contract of contract agent for a duration corresponding at least to the time remaining under the contract concluded before the date of applicability of this Decision.**

- 3. If a second fixed term contract had been concluded by Europol before the date of applicability of this Decision, and the staff member accepted a contract of temporary agent or contract agent under the conditions set out in the previous paragraph, any subsequent renewal can only be concluded for an indefinite period, in conformity with the provisions of Article 38 (4) of this Decision.**
- 4. If a contract of an indefinite duration had been concluded by Europol before the date of applicability of this Decision, and the staff member accepted a contract of temporary agent or contract agent under the conditions set out in subparagraph 3 of paragraph 2, this contract will be concluded for an indefinite duration in conformity with Article 8 subparagraph (1) and Article 85 (1) of the CEOS.**
5. The Europol Staff Regulations²² and **other relevant instruments** shall continue to apply to staff members who are not recruited in accordance with paragraph 2. By way of derogation from Chapter 5 of the Europol Staff Regulations, the percentage rate of the annual adjustment of remuneration decided by the Council in accordance with Article 65 of the Staff Regulations of officials of the European Communities shall apply to Europol staff.

22 OJ C 26, 30.1.1999, p. 23.

Article 57

Budget

1. The discharge procedure in respect of the budgets approved on the basis of Article 35(5) of the Europol Convention, shall be carried out in accordance with Article 36(5) of the Europol Convention and the financial regulation adopted on the basis of Article 35(9) of the Europol Convention.

- 1bis. In carrying out the discharge procedure described at paragraph (1) above, the following shall apply:
 - (a) the function performed by the Joint Audit Committee under Article 36(3) of the Europol Convention shall be performed by the European Court of Auditors; and
 - (b) the Management Board referred to in Article 35 of this Decision shall have the right to decide upon the substitution of the functions previously performed by the Financial Controller and the Financial Committee on the basis of the Europol Convention.

2. All expenditure resulting from commitments made by Europol in accordance with the financial regulation adopted on the basis of Article 35(9) of the Europol Convention before this Decision is applicable which has not yet been paid at that time shall be paid in the manner described at paragraph (3) below.

3. Before the expiry of a period of twelve months after the application of this Decision, the Management Board shall establish the amount covering the expenditure referred to in paragraph 2. A corresponding amount, financed from the accumulated surplus of the budgets approved on the basis of Article 35(5) of the Europol Convention, shall be transferred into the first budget established under this Decision and shall constitute an assigned revenue to cover this expenditure.

If the surpluses are not sufficient to cover the expenditure referred to in paragraph 2, the Member States shall provide the financing necessary on the basis of the Europol Convention.

4. The remainder of the surpluses of the budgets approved on the basis of Article 35(5) of the Europol Convention shall be paid back to the Member States. The amount to be paid to each of the Member States shall be calculated on the basis of the annual contributions from the Member States to the Europol budgets established on the basis of Article 35(2) of the Europol Convention.

The payment shall be made within three months after the amount covering the expenditure referred to in paragraph 2 has been established and the discharge procedures regarding the budgets approved on the basis of Article 35(5) of the Europol Convention have been completed.

Article 58
Measures to be prepared and adopted before applicability

1. The Management Board set up on the basis of the Europol Convention, as well as the Director, appointed on the basis of that Convention, and the Joint Supervisory Body set up on the basis of the Europol Convention shall prepare the adoption of the instruments listed below:
 - (a) the rules and obligations of Liaison Officers as referred to in Article 9(4);
 - (b) the rules applicable to Analysis Work Files as referred to in the third subparagraph of Article 14(1);
 - (c) the rules regarding the relations of Europol, as referred to in Article 25(1)(b);
 - (d) [...]

- (e) the rules implementing the Staff Regulations referred to in Article 36(8)(c);
 - (f) the rules on the selection and dismissal of the Director and Deputy Directors referred to in Article 37(3) and (7);
 - (g) the rules on confidentiality referred to in Article 39(1);
 - (h) the financial regulation referred to in Article 43
 - (i) any other instrument necessary for the preparation of the application of this Decision.
2. For the purpose of adopting the measures referred to in paragraphs 1(a), (e), (f), (h) and (i) the composition of the Management Board shall be as laid down in Article 36(1). The Management Board shall adopt those measures in accordance with the procedure as set out in the provisions referred to in paragraphs 1(a), (e), (f) and (h).

The Council shall adopt the measures referred to in paragraphs 1(b), (c) and (g) in accordance with the procedure as set out in the provisions referred to in paragraphs 1(b), (c), and (g).

Article 58bis

Financial actions and decisions to be taken before applicability

1. The Management Board, in its composition as laid down in Article 36(1) of this Decision, shall take all financial actions and decisions necessary for the application of the new financial framework.
2. The actions and decisions referred to at paragraph (1) above shall be taken in line with the Framework Regulation and shall include, but are not limited to the following:

- (a) preparation and adoption of all actions and decisions referred to in Article 41 in relation to the first budgetary year after the date of applicability of this Decision;
 - (b) appointment of the Accounting Officer as provided for in Article 36(8) (d) by 15 November in the year prior to the first budgetary year after the date of applicability;
 - (c) establishment of the Internal Audit Function as provided for in Article 36(8)(e)(bis).
3. The authorisation of operations which accrue to the first budgetary year after the date of applicability of this Decision, shall be performed by the Director appointed under Article 29 of the Europol Convention from 15 November in the year prior to the first budgetary year after the date of applicability. From this date onwards, the Director shall also be entitled to delegate the function of Authorising Officer as necessary. In the performance of the role of Authorising Officer, the requirements of the Framework Regulation shall be observed.
4. The ex-ante verification of operations that accrue to the first budgetary year after the date of applicability of this Decision shall be taken by the Financial Controller established under Article 27(3) of the Europol Convention during the period 15 November to 31 December in the year prior to the first budgetary year after the date of applicability until the date of applicability. The Financial Controller shall perform this function in line with the Framework Regulation.
5. Part of the transitory costs incurred by Europol to prepare for the new financial framework from the year prior to the first budgetary year after the date of applicability shall be born by the Community budget. These costs may take the form of a Community grant.

CHAPTER XI - FINAL PROVISIONS

Article 59

Transposition

The Member States shall ensure that their national law is in conformity with this Decision by the date of applicability.

Article 60

Replacement

This Decision replaces the Europol Convention and the Protocol on the privileges and immunities of Europol, the members of its organs, the Deputy Directors and employees of Europol as of 1 January 2010 or the date of application of Regulation XX as referred to in Article 50 (1), whichever is the later.

Article 61

Repeal

Unless otherwise stipulated in this Decision, all measures implementing the Europol Convention are repealed with effect from 1 January 2010 or the date of application of Regulation XX as referred to in Article 50 (1), whichever is the later.

Article 62

Entry into force and applicability

1. This Decision shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.

2. It shall apply from 1 January 2010 or the date of application of Regulation XX as referred to in Article 50 (1), whichever is the later. Articles 56²³, 58, 58bis and 59 shall apply as from the date of entry into force.

23 NL suggested adding Art. 55(2).

ANNEX I

List of other forms of serious crime which Europol is competent to deal with in accordance with Article 4(1):

- unlawful drug trafficking
- illegal money-laundering activities
- crime connected with nuclear and radioactive substances
- illegal immigrant smuggling
- trafficking in human beings
- motor vehicle crime
- murder, grievous bodily injury
- illicit trade in human organs and tissue
- kidnapping, illegal restraint and hostage taking
- racism and xenophobia
- 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
- 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

With regard to the forms of crime listed in Article 4(1) for the purposes of this Decision:

- “crime connected with nuclear and radioactive substances” means the criminal offences listed in Article 7(1) 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;
- “trafficking in human beings” means the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, the production, sale or distribution of child-pornography material, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;
- “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;

- “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.

The forms of crime referred to in Article 4 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.

