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From: Presidency

To: Article 36 Committee

Subject : Chairman's Summary of the High Level Conference on the Future of Europol (23 and 24 February 2006)

Delegations find in Annex the Chairman's Summary of the High Level Conference on the Future of Europol (23 and 24 February 2006)

1. Chairman's Summary

High Level Conference on the Future of Europol

23 and 24 February 2006

At the Justice and Home Affairs Informal Ministerial Meeting of 12 to 14 January 2006, the Austrian Presidency proposed to commence a discussion on the framework and objectives for the further development of Europol. The High Level Conference on the Future of Europol, held in Vienna on 23 and 24 February 2006, aimed at continuing the discussion held at the Informal JHA Council by highlighting further issues that Member States feel should be scrutinised when contemplating changes to the way Europol works. The Conference was held in an open atmosphere and was intended to provide ideas and ways forward on a wide range of topics.

Europol is the oldest child of EU law enforcement cooperation. It can look back to nearly seven years of increasing acceptance by the Member States law enforcement authorities. Still, nowadays its structure can no longer be regarded as reflecting state of the art third pillar legislation. 10 years ago it was the right thing to create Europol as a convention based organisation. Today there is political will to further develop and strengthen Europol; not to found it anew, but to develop Europol in an evolutionary fashion.

The High Level Conference of 23 and 24 February 2006 was intended to provide material for the further work on defining the contemporary thinking on the Future of Europol. At the end of its Presidency Austria will report on the options for Europol's further development that were mentioned in this discussion process. In addition, specific conclusion of the Council will be prepared for concrete follow up action on different levels.

Besides an introduction and keynote addresses three working sessions were held.

Session A discussed the view of the delegates on the role of Europol in the Area of Freedom, Security and Justice. Intersections and boundaries with other EU-institutions in the field were mentioned; also the position of Europol and its partners in the Members States in the overarching debate on the internal architecture of internal security in the EU.

A discussion emerged on whether Europol required enlargement or deepening. It was argued that this was not necessarily a contradiction, since these processes can be carried out simultaneously. The role of the three protocols was repeatedly highlighted. As already mentioned during the informal JHA the ratification of the protocols is of highest priority, otherwise a gap between political will and practise of implementation will be identified.

Using the current version of the TEU as a basis for Europol would mean to replace the Convention by a Council Decision.

As to the mandate of Europol it was suggested that a careful widening of the mandate would be in the interest of all Europol stakeholder. This widening should enable Europol to become 'more operational', meaning that Europol could, to name a few examples, more directly support joint investigation teams and deal with crimes of a particular European nature such as trafficking in human beings or counterfeiting of the Euro.

The relevance of regional initiatives for the discussion at hand was addressed, as were decentralised models like the Prüm Treaty or the example of joint investigation teams and COSPOL as advanced instruments in the area of EU police cooperation.

The relationship between Europol and Eurojust, its younger brother-organisation, was characterised as well developing, but having further potential.

Cooperation with third States and international organisations was identified as an issue of particular relevance. The modalities for Europol to enter into structured cooperation with third parties, however, clearly need improvement. As an example, ways should be found to enable Europol to exchange information also with countries that do not have the same data protection standards as those that are applicable within the European Union.

The creation of an agency was welcomed but the details on how Europol should be run as an 'agency' requires further study. The representation of the Member States in the governance of Europol and the institutional cooperation between Europol and the Member States' law enforcement authorities are topics that will need to be looked into.

It is evident that OCTA plays a central role for EU-wide police cooperation. A further evolution of Europol will be necessary in the light of the experience gained from OCTA.

Europol's role in the past is widely seen as a very positive one. It is also expected to play a very important role in the future. The role of other players such as Frontex, OLAF, however, is defined in a more precise fashion, and they benefit from a more modern basis for their work. Consequently, if there are any obstacles in Europol's legal basis that hamper cooperation between Europol and its partners then they will have to be removed.

Europol needs better access to information. Some thought about a system that makes it visible if Member States do not supply information. In the light of the principle of availability it is necessary to avoid all obstacles that stand in the way of efficient exchange of data. The concrete consequences of the Principle of availability for the work of Europol, however, need to be further discussed.

Democratic supervision of Europol was reflected upon as well. It was stated that the present legal framework allows for sufficient parliamentary control.

A strategy for external relations should be agreed and updated at the appropriate level, and it should consider the role of Europol in the Western Balkans.

Session B aimed at taking a closer look at the development of Europol's operational work from the starting days in 1999 until today and beyond. Then the session focussed on the need for the Member States and Europol for a plan for operational cooperation within the 'Third Pillar'. Also, experiences and requirements from national law enforcement officials towards Europol and towards their partners in the Member States were addressed.

The mandate of Europol was discussed to some extent, with some saying that Europol should not focus on organised crime but towards transborder serious crime. It was also stated that Europol should concentrate on collecting and analysing data with a view to better support Member States' investigations.

As to the work of the Member States' liaison officers it was stated that the difference in background still creates certain problems with regard to mutual confidence and trust. Some information is still not supplied to Europol because the potential providers in the Member States do not know what will happen with that information at Europol.

It was wished that the national units could play a stronger role. Also, AWF procedures should be reviewed and subsequently simplified.

The Western Balkans region is of great importance for internal security within the EU. It was said that Europol should play a greater role in this area, especially with regard to the cooperation with SECI as soon as the legal issues surrounding the cooperation with this body are removed.

As to possible changes to Europol's mandate it was generally mentioned that no full law enforcement competencies for Europol are desired. A clear description of the competences is wished for, with the wording of the Constitutional Treaty outlining a framework for discussion. It was felt that changes to the current Article 2 of the Europol Convention are necessary. Europol should be tasked to deal with "transborder serious crime". The short term objective, however, must be the ratification of the three protocols.

It was suggested that a strengthening of Europol concerning its role in combating the counterfeiting of the EURO should be started.

Art. 5 of the Convention demands that the national desks are better integrated into the work of Europol, the methods to achieve this still need to be defined. OCTA is a very important reference point for the development of a security plan.

AWFs are undisputedly a huge added value for the MS; there are many examples for good operational successes. The discussion on the supply of data by the MS should be continued and new ways to enable Europol to get the right data into its files should be explored.

To establish an AWF causes a lot of administrative work. It was proposed that this procedure should be revised. The feeling was expressed that JITs are discussed at high level only, officers seldom hear anything about them.

Session C looked into the potential value of cooperation via Europol that is possible under the current Europol framework but that was not, or not to the possible extent, exhausted by the Europol stakeholders. Also, the question was addressed whether there is a potential for more effective corporate governance and faster operational procedures that could not be materialised due to Europol's current governing procedures. Plus, light was shed on current developments on EU level such as Joint Investigation Teams and the Principle of Availability with a view to identify new possibilities for Europol in supporting Member States' law enforcement cooperation.

A case was made for a security plan at the European level, which would also bring about benefits for defining the role of Europol and thereby allowing Europol to exploit its full potential.

To appreciate the full potential of Europol it must be borne in mind that the architecture of Europol dates back to the early 1990s. Since then IT technology underwent a fast technical development and many new methods for police work at EU-level came into being. The Principle of Availability can be mentioned here together with intelligence led policing.

As a very concrete example of quick wins the existing secured telephone line was mentioned that connects Europol and the National Units in the Member States. With a change in the applicable law, or maybe even only a change in interpretation, these lines could be made available to the Member States for communication amongst each others.

More complex changes in the understanding of Europol's role also promise to deliver new results: A different attitude towards the existing cooperate government system applied for Europol can be named as an example here. It should be attempted to streamline the decision making processes of the Management Board, the Director and other bodies such as PCTF or the Council structure. To give an example, both the Member States and Europol feel that too much paper work is involved in the Management Board's work. Resources could possibly be saved on both sides if a clear expectation would be expressed on the precise role of the Management Board in Europol's Corporate Governance. Making the bodies representing the Member States towards Europol act in a more common way and have them express their views on Europol's direction with one voice will clearly increase the efficacy of Europol's corporate governance system.

Proposals were made for the Management Board to act more strategy minded. Often the work by the Management Board should be more directly prepared by sub-groups of the Management Board. For that to be possible clear instructions from the Management Board are needed, and consistent Member States' representation in the different levels of Europol's corporate governance.

Looking at the subsurface potential from a different angle the possible obstacles were discussed that could keep operational teams from different Member States to use the Europol infrastructure and support facilities. In the absence of concrete data a lack of confidence in the possibilities of Europol has to be expected as the main reason that hinders wider usage of Europol services by the practitioners. A – in most cases erroneous - perception of specific legal difficulties was also mentioned.

In the context of the discussion on the Principle of Availability it was mentioned that the principle of a mutual exchange of information is already enshrined in the Europol legal framework. The observation was added that according to the Convention the duty to supply data from the Member States to Europol is a moral duty and not legally binding.

The interesting question was raised on what would happen if all data on organised crime would one day actually be sent to Europol. The conclusion was that Europol can not handle all OC-related data and that therefore a filtering mechanism is needed. Various ideas were expressed on what information Europol should receive from the Member States but it was widely held that there is a need for common standards.

With a view to an area nearby, it was mentioned that contrary to general opinion police cooperation does not have an advantage to judicial cooperation. The principle that there is an obligation for Members States to pass on judicial information does exist for some time. The suggestion was made to create, next to the Arrest Warrant, a 'pre-evidence warrant' for information that is used for investigations.

On the specific nature of the European Police Office it was said that Europol is an organism that came into being following a political discussion. In that respect Europol is no different from national police forces, since in all MS there is political influence on the police, as a consequence of the constitutional systems of the EU Member States.

In conclusion of the Conference the participants were invited to keep forwarding their ideas on the Future of Europol to the Presidency. All suggestions will be used for drawing up an options paper on the Future of Europol.

Summarising the main ideas expressed during the two days conference the following conclusions were drawn up by the chairman:

1. The ratification of the three protocols should be concluded within 2006
2. The implementation of the three protocols should be commenced without delay so that they will be in place when the three protocols have been ratified.
3. The Europol Convention should be transformed into a Council Decision.
4. A debate on an extension of the Europol mandate should be started. By strengthening its support capacity Europol should become more operational.
5. A debate should be commenced on the transformation of Europol into an agency, following the example of CEPOL.
6. A comprehensive concept for the relations between Europol and other relevant institutions in the EU and the Member States should be established.
7. The corporate governance of Europol needs to be streamlined; the Director should be given the possibilities to effectively implement the strategic directives given by the Member States.
8. The role of Europol in the implementation of the principle of availability and concepts for enhancing and guaranteeing the exchange of data between Member States and Europol should be looked into.
9. More flexible rules for data protection should be developed whilst at the same time maintaining the high standards achieved so far.
10. Democratic control of Europol should be developed in accordance with the extension of Europol's powers.
11. Europol should become more visible in the law enforcement community and the public.
12. A new form of cooperation between Europol and the Member States is evolving. Attempts should be made to allow this relationship to further grow and prosper.

Following the High Level Conference on “The Future of Europol” a **Friends of the Presidency Group** is set up to prepare an options paper on the future development of Europol. The options paper on the Future of Europol will be presented to the JHA-Council of 1 and 2 June 2006.

The first meeting of the Group Friends of Presidency is scheduled for 16 March 2006. Further meetings will be organised for 5 and 6 April and 24 and 25 April.