



**COUNCIL OF
THE EUROPEAN UNION**

**Brussels, 4 November 2003
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EUROPOL 53

LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject : Council Act drawing up, on the basis of Article 43(1) of the Convention on the establishment of a European Police Office (Europol Convention), a Protocol amending that Convention

COUNCIL ACT

of

drawing up, on the basis of Article 43(1) of the Convention
on the establishment of a European Police Office (Europol Convention),
a Protocol amending that Convention

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Convention on the Establishment of a European Police Office
(Europol Convention) ¹, and in particular Article 43(1) thereof,

Having regard to the initiative of the Kingdom of Denmark ²,

Having regard to the Opinion of the European Parliament ³,

Having regard to the Opinion of the Management Board of Europol ⁴,

¹ OJ C 316, 27.11.1995, p. 2.

² OJ C 172, 18.7.2002, p. 15.

³ Opinion delivered on 9 April 2003 (not yet published in the Official Journal).

⁴ Opinion delivered on 31 October 2002, additional opinion delivered on 24 June 2003.

Whereas:

- (1) Pursuant to Article 30(2) of the Treaty on European Union, within a period of five years after the entry into force of the Treaty of Amsterdam on 1 May 1999, the Council is to promote cooperation in a number of different areas, inter alia through Europol.
- (2) The Tampere European Council in October 1999 stated that Europol has a key role with respect to cooperation between Member States' authorities in the field of cross-border crime investigation in supporting Union-wide crime prevention, analyses and investigation. The European Council called on the Council to provide Europol with the necessary support,

HAS DECIDED to draw up the attached Protocol amending the Convention on the establishment of a European Police Office (Europol Convention), signed today by the representatives of the governments of the Member States, and

RECOMMENDS that Member States adopt this Protocol in accordance with their respective constitutional requirements.

Done at

For the Council
The President

DECLARATION BY THE COUNCIL

The Council agrees that the instruction of Europol to deal with "fraud" as one of the forms of crime referred to in the Annex to the Europol Convention confers, as far as tax fraud and customs fraud is concerned, competences to Europol only in the field of improvement of the effectiveness and cooperation of the competent authorities of the Member States responsible for the functioning of the criminal law enforcement system and not their authorities responsible for ensuring the levying of taxes and customs duties.

PROTOCOL
DRAWN UP ON THE BASIS OF ARTICLE 43(1) OF THE CONVENTION
ON THE ESTABLISHMENT OF A EUROPEAN POLICE OFFICE
(EUROPOL CONVENTION) AMENDING THAT CONVENTION

THE HIGH CONTRACTING PARTIES to this Protocol, Contracting Parties to the Convention on the Establishment of a European Police Office (Europol Convention), Member States of the European Union,

REFERRING TO the act of the Council of the European Union of ...,

CONSIDERING THAT:

- (1) The Europol Convention needs to be amended in the light of the discussions within the Council.
- (2) Europol needs to be given the necessary support and means to function effectively as the focal point of European police cooperation.
- (3) The required changes need to be made to the Europol Convention so as to strengthen Europol's operational support function with respect to the national police authorities.
- (4) The European Council has stated that Europol has a key role with respect to cooperation between Member States' authorities in the field of cross-border crime investigation in supporting Union-wide crime prevention, analyses and investigation. The European Council has called on the Council to provide Europol with the necessary support,

HAVE AGREED UPON THE FOLLOWING PROVISIONS:

ARTICLE 1

The Europol Convention is hereby amended as follows:

- 1) Article 2 shall be replaced by the following:

"Article 2

Objective

1. The objective of Europol shall be, within the framework of police cooperation between the Member States pursuant to the Treaty on European Union, to improve, by means of the measures referred to in this Convention, the effectiveness and cooperation of the competent authorities in the Member States in preventing and combating serious international crime where there are factual indications or reasonable grounds for believing that an organised criminal structure is involved and two or more Member States are affected in such a way as to require a common approach by the Member States owing to the scale, significance and consequences of the offences concerned. For the purpose of this Convention the following forms of crime shall be considered as serious international crime: crimes committed or likely to be committed in the course of terrorist activities against life, limb, personal freedom or property, unlawful drug trafficking, illegal money-laundering activities, trafficking in nuclear and radioactive substances, illegal immigrant smuggling, trade in human beings, motor vehicle crime and the forms of crime listed in the Annex or specific manifestations thereof.

2. On a proposal from the Management Board, the Council shall unanimously lay down the priorities for Europol in respect of the combating and prevention of the forms of serious international crime within its mandate.

3. Europol's competence as regards a form of crime or specific manifestations thereof shall cover related criminal offences. It shall, however, not cover offences predicate to illegal money-laundering activities with regard to which forms of crime Europol has no competence pursuant to paragraph 1.

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

- criminal offences committed in order to procure the means for perpetrating acts within Europol's sphere of competence,
- criminal offences committed in order to facilitate or carry out acts within Europol's sphere of competence,
- criminal offences committed to ensure the impunity of acts within Europol's sphere of competence.

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

2) Article 3 shall be amended as follows:

(a) Paragraph 3 shall be replaced by the following:

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

- 1) training of members of their competent authorities;
- 2) organisation and equipment of those authorities through facilitating the provision of technical support between the Member States;
- 3) crime prevention methods;
- 4) technical and forensic police methods and investigative procedures."

(b) The following paragraph shall be added:

"4. Without prejudice to the Convention for the Prevention of Counterfeiting Currency, signed at Geneva on 20 April 1929, and the protocol thereto, Europol shall also act as a European Union contact point in its contacts with third States and organisations for the suppression of counterfeit euro currency."

3) Article 4 shall be amended as follows:

(a) Paragraph 2 shall be replaced by the following:

"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."

(b) In paragraph 5, the words "as set out in Article K.2(2) of the Treaty on European Union," shall be replaced by the words "with regard to the maintenance of law and order and the safeguarding of internal security,".

(c) Paragraph 7 shall be replaced by the following:

"7. The Heads of national units shall meet on a regular basis to assist Europol, at their own motion or on request, by giving advice."

4) The following Article shall be inserted:

"Article 6a

Information processing by Europol

In support of the execution of its tasks, Europol may also process data for the purpose of determining whether such data are relevant for its tasks, and can be included in the computerised system of collected information referred to in Article 6(1).

The Contracting Parties meeting within the Council, acting with a two-third majority, shall determine 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 14. The Management Board shall prepare the decision of the Contracting Parties and consult the joint supervisory body referred to in Article 24."

5) Article 9 shall be amended as follows:

(a) The first sentence of paragraph 1 shall be replaced by the following:

"1. National units, liaison officers and the Director, Deputy Directors or duly empowered Europol officials shall have the right to input data directly into the information system and retrieve them therefrom."

(b) The following paragraph shall be added:

"4. 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 Europol national unit.

Information concerning the designated competent authorities, 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."

6) Article 10 shall be amended as follows:

(a) In paragraph 1 the introductory part shall be replaced by the following:

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

(b) Point 1 of paragraph 2, shall be replaced by the following:

"(1) analysts and other Europol officials designated by the Europol Directorate;"

(c) The following subparagraph shall be added after point 2 of paragraph 2:

"Only analysts shall be authorised to enter data into the file concerned and modify such data; all participants may retrieve data from the file".

(d) Paragraph 5 shall be replaced by the following:

"5. In so far as Europol is entitled under European Union or international legal instruments to gain computerised access to data from other information systems, Europol may retrieve personal data by such means if this is necessary for the performance of its tasks pursuant to point 2 of Article 3(1). The applicable provisions of such European Union or international legal instruments shall govern the use of this data by Europol."

- (e) The second sentence of paragraph 8 shall be replaced by the following:

"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."

- (f) The following paragraph shall be added:

"9. Europol may invite experts of third States or third bodies within the meaning of paragraph 4 to be associated with the activities of an analysis group, where:

- (1) an agreement is in force between Europol and the third State or third body, which contains appropriate provisions on the exchange of information, including the transmission of personal data, as well as on the confidentiality of exchanged information;
- (2) the association of the experts of the third State or third body is in the interest of the Member States;
- (3) the third State or third body is directly concerned by the analysis work; and
- (4) all participants within the meaning of paragraph 2 agree on the association of the experts of the third State or third body with the activities of the analysis group.

The association of experts of a third State or a third body with the activities of an analysis group shall be subject to an arrangement between Europol and the third State or third body. The rules governing such arrangements shall be determined by the Management Board acting by a majority of two-thirds of its members.

Details of the arrangements between Europol and third States or third bodies shall be sent to the joint supervisory body referred to in Article 24 which may address any comments it deems necessary to the Management Board."

7) Article 12 shall be replaced by the following:

"Article 12

Order opening a data file

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

- (1) the file name;
- (2) the purpose of the file;
- (3) the groups of persons on whom data are stored;
- (4) the nature of the data to be stored, and any of the data listed in the first sentence of Article 6 of the Council of Europe Convention of 28 January 1981 which are strictly necessary;
- (5) the type of personal data used to open the file;
- (6) the supply or input of the data to be stored;
- (7) the conditions under which the personal data stored in the file may be communicated, to which recipients and under what procedure;

(8) the time limits for examining the data and the duration of storage;

(9) the method of establishing the audit log.

2. The Management Board and the joint supervisory body provided for in Article 24 shall immediately be advised by the Director of Europol of the order opening the file and shall receive the dossier.

The joint supervisory body may address any comments it deems necessary to the Management Board. The Director of Europol may request the joint supervisory body to do this within a certain period of time.

3. At any time the Management Board may instruct the Director of Europol to amend an opening order or close the file. The Management Board shall decide on what date any such amendment or closure will have effect.

4. The data file may not be retained for a period of more than three years. Before the three year period has expired, however, Europol shall review the need for the continuation of the file. When it is strictly necessary for the purpose of the file, the Director of Europol may order the continuation of the file for a new period of three years. The procedure to be followed in such cases shall be as specified in paragraphs 1 to 3."

- 8) Article 16 shall be replaced by the following:

"Article 16

Provisions on control of retrievals

Europol shall establish appropriate control mechanisms to allow the verification of the legality of retrievals from the computerised system of collected information referred to in Articles 6 and 6a.

The data thus collected shall be used only for this purpose by Europol and the supervisory bodies referred to in Articles 23 and 24 and shall be deleted after 6 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."

- 9) Article 18 shall be amended as follows:

Point 3 of paragraph 1 shall be replaced by the following:

"(3) this is permissible under the general rules within the meaning of paragraph 2; such rules may provide for a deviation from point 2 in exceptional cases where the Director of Europol 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. The Director of Europol shall in all circumstances consider the data protection level in the State or body in question with a view to balancing this data protection level with the interests referred to above."

10) Article 21(3) shall be replaced by the following:

"3. The need for continued storage of personal data relating to individuals as referred to in Article 10 (1) shall be reviewed every year and the review documented. Storage of such data in a data file referred to in Article 12 may not exceed the period of existence of the file."

11) The following paragraph shall be added to Article 22:

"4. The principles laid down in this title concerning information processing shall apply to data in paper files."

12) In Article 24(6) the words "In accordance with the procedure laid down in Title VI of the Treaty on European Union, these shall be forwarded to the Council;" shall be replaced by the following:

"Such reports shall be forwarded to the European Parliament and the Council;"

13) In Article 26(3) the words "and of Title VI of the Treaty on European Union" shall be deleted.

14) Article 28 shall be amended as follows:

(a) Point (1) shall be replaced by the following:

"(1) shall take part in the establishment of the priorities for Europol in respect of the combating and prevention of the forms of serious international crime within its mandate (Article 2(2));"

(a) The following points shall be inserted:

"(3a) shall take part in the determination of the conditions related to the processing of data for the purpose of determining whether such data are relevant for its tasks, and can be included in the computerised system of collected information (Article 6a);"

"(4a) shall determine by a majority of two-thirds of its members the rules governing arrangements regarding the association of experts of a third State or a third body with the activities of an analysis group (Article 10(9));"

(c) Point (7) shall be replaced by the following:

"(7) may instruct the Director of Europol to amend an opening order or close the file (Article 12(3));"

(d) The following point shall be inserted:

"(14a) shall, acting by a majority of two-thirds of its members, adopt rules for access to Europol documents (Article 32a); "

(e) Point (22) shall be replaced by the following:

"(22) shall take part in any amendment of this Convention or the Annex thereto (Article 43);"

(f) Paragraph 10 shall be replaced by the following:

"10. Taking into account the priorities as set out by the Council in accordance with Article 2(2) and the update by the Director of Europol as referred to in point 6 of Article 29(3), the Management Board shall adopt unanimously each year:

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

Such reports shall be submitted to the Council to take note and endorse. They shall also be forwarded by the Council to the European Parliament for information."

15) In Article 29(3):

– point 6, shall be replaced by the following:

"6) on a regular basis, updating the Management Board on the implementation of the priorities as referred to in Article 2(2);"

– the following point shall be added:

"7) all other tasks assigned to him in this Convention or by the Management Board."

16) In Article 30(1) the words "Title VI of" shall be deleted.

17) The following Article shall be inserted:

"Article 32a

Right of access to Europol documents

On the basis of a proposal by the Director of Europol, the Management Board, acting by a majority of two thirds of its members, shall adopt rules for access to Europol documents for any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, taking account of the principles and limits stated in the Regulation of the European Parliament and of the Council regarding public access to European Parliament, Council and Commission documents adopted on the basis of Article 255 of the Treaty establishing the European Community."

18) Article 34 shall be replaced by the following:

"Article 34

Informing the European Parliament

1. The Council shall consult the European Parliament in accordance with the consultation procedure laid down in the Treaty on European Union on any initiative of a Member State or proposal of the Commission pertaining to the adoption of any measure referred to in Articles 10(1), 10(4), 18(2), 24(7), 26(3), 30(3), 31(1), 42(2), or should this Convention or the Annex thereto be amended in any way.

2. The Presidency of the Council or its representative may appear before the European Parliament with a view to discuss general questions relating to Europol. The Presidency of the Council or its representative may be assisted by the Director of Europol. The Presidency of the Council or its representative shall, with respect to the European Parliament, take into account the obligations of discretion and confidentiality.

3. The obligations laid down in this Article shall be without prejudice to the rights of national parliaments and to the general principles applicable to relations with the European Parliament pursuant to the Treaty on European Union."

19) The following shall be added to Article 35(4):

"The five-year financing plan shall be sent to the Council. It shall also be forwarded by the Council to the European Parliament for information."

- 20) In Article 39(4) the phrase starting with the words "the Brussels Convention of" shall be replaced by the following:

"Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters."

- 21) The following paragraph shall be added to Article 42:

"3. Europol shall establish and maintain close cooperation with Eurojust, in so far as it is relevant for the performance of the tasks of Europol and for achieving its objectives, taking into account the need to avoid duplication of effort. The essential elements of such cooperation shall be determined by an agreement to be established in accordance with this Convention and its implementing measures."

- 22) Article 43 shall be amended as follows:

(a) In paragraph 1, the words "of Article K.1(9)" shall be deleted.

(b) Paragraph 3 shall be replaced by the following:

"3. However, the Council, acting unanimously, may decide, after the Management Board has discussed the matter, to amend the Annex to this Convention by adding other forms of serious international crime or modifying the definitions therein."

23) The Annex shall be amended as follows:

- (a) The title shall be replaced by the following:

"ANNEX referred to in Article 2

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

- (b) The paragraph beginning with the words "In addition, in accordance with Article 2(2)" shall be deleted.

- (c) In the paragraph beginning with the words "With regard to the forms of crime listed in Article 2(2)", "Article 2(2)" shall be replaced by "Article 2(1)".

- (d) The following indent shall be added after the words "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."

- 24) In Article 10(1) and (4), Article 18(2), Article 29(1), Article 29(6), Article 30(3), Article 31(1), Article 35(5) and (9), Article 36(3), Article 40(1), Article 41(3), Article 42(2) and Article 43(1), the words "in accordance with the procedure laid down in Title VI of the Treaty on European Union" shall be deleted.

ARTICLE 2

1. This Protocol shall be adopted by the Member States in accordance with their respective constitutional requirements.
2. Member States shall notify the Secretary-General of the Council of the European Union of the completion of the constitutional procedures for the adoption of this Protocol.
3. This Protocol shall enter into force ninety days after the notification referred to in paragraph 2 by the State which was a member of the European Union at the time of adoption by the Council of the Act establishing this Protocol and was the last to complete the notification.

ARTICLE 3

If this Protocol enters into force in accordance with Article 2(3) prior to the entry into force of the Protocol drawn up on the basis of Article 43(1) of the Convention on the Establishment of a European Police Office (Europol Convention) amending Article 2 and the Annex to that Convention ¹, in accordance with Article 2(3) thereof, the latter protocol shall be deemed to have been repealed.

ARTICLE 4

1. This Protocol shall be open to accession by any State that becomes a member of the European Union if it has not already entered into force by the date of deposit of the instruments of accession to the Europol Convention pursuant to Article 46 thereof.
2. The instruments of accession to this Protocol shall be deposited at the same time as the instruments of accession to the Europol Convention pursuant to Article 46 thereof.
3. The text of this Protocol in the language of the acceding State, drawn up by the Council of the European Union, shall be authentic.

¹ OJ C 358, 13.12.2000, p. 2.

4. If this Protocol has not already entered into force at the time of expiry of the period referred to in Article 46(4) of the Europol Convention, it shall enter into force with respect to any acceding State on the date on which the Protocol enters into force in accordance with Article 2(3).

5. If this Protocol enters into force pursuant to Article 2(3) prior to expiry of the period referred to in Article 46(4) of the Europol Convention, but after deposit of the instrument of accession referred to in paragraph 2, the acceding Member State shall accede to the Europol Convention as amended by this Protocol, in accordance with Article 46 of the Europol Convention.

ARTICLE 5

1. The Secretary-General of the Council of the European Union shall act as depository of this Protocol.

2. The depository shall publish in the Official Journal of the European Union information on adoptions and accessions and any other notification concerning this Protocol.