



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 8 March 2001

6876/01

LIMITE

EUROPOL 22

NOTE

From :	Presidency
To :	Europol Working Party
No. prev. doc. :	5555/01 EUROPOL 5
Subject :	Two draft legal instruments containing possible amendments to the Europol Convention as well as an extension of Europol's mandate

Following the discussions in the Article 36 Committee and the Europol Working Party the Presidency drafted two Council Instruments implementing the ideas set out in document 5555/01 EUROPOL 5. In Annex please find

- (a) A draft Council Act and Protocol amending the Europol Convention in respect of Europol's participation in joint investigative teams, Europol's possibilities to ask Member States to start investigations and the competencies of Europol.
- (b) A draft Council Decision extending Europol's competencies to all forms of crime mentioned in the Annex to the Europol Convention and adding certain definitions to the Annex.

Delegations are requested to give first preliminary reactions to the aforementioned draft instruments. On the basis of the comments made by delegations, the Presidency will consider the further course of action, which includes the possible tabling of a formal Swedish initiative.

COUNCIL

Initiative of the Kingdom of Sweden with a view to adopting a Council Act drawing up on the basis of Article 43(1) of the Europol Convention of a Protocol amending Article 2 of 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 to Article 43(1) thereof,

Having regard to the initiative of the Kingdom of Sweden,

Having regard to the opinion of the European Parliament,

Having regard to the opinion of the Management Board,

Whereas:

1. pursuant to Article 30(2)(a) of the Treaty on European Union the Council shall enable Europol to facilitate and support the preparation, and to encourage the co-ordination and carrying out, of specific investigative actions by the competent authorities of the Member States, including operational actions of joint teams comprising representatives of Europol in a support capacity,
2. pursuant to Article 30(2)(b) of the Treaty on European Union the Council shall adopt measures allowing Europol to ask the competent authorities of the Member States to conduct and co-ordinate their investigations in specific cases and to develop specific expertise which may be put at the disposal of Member States to assist them in investigating cases of organised crime,

¹ OJ C 316, 27.11.1995, p. 2.

HAS DECIDED on the drawing up of a Protocol, the text of which is annexed, amending the Convention on the establishment of a European Police Office, which has been signed today by the representatives of the Governments of the Member States of the European Union;

RECOMMENDS that it be adopted by the Member States in accordance with their respective constitutional requirements.

Done at Brussels, 00.00.0000.

For the Council

The President

PROTOCOL

drawn up on the basis of Article 43(1) of the Convention on the establishment of a European Police Office (Europol Convention) of a Protocol amending Article 2 of that Convention

THE HIGH CONTRACTING PARTIES to this Protocol and Contracting Parties to the Convention on the establishment of a European Police Office, Member States of the European Union,

REFERRING to the Act of the Council of the European Union of 00.00.0000,

Whereas:

1. there is a need to give Europol more effective tools to fight organised crime in order to reinforce Europol's possibilities to support the Member States in this fight,
2. pursuant to Article 30(2)(a) of the Treaty on European Union the Council shall enable Europol to facilitate and support the preparation, and to encourage the co-ordination and carrying out, of specific investigative actions by the competent authorities of the Member States, including operational actions of joint teams comprising representatives of Europol in a support capacity,
3. pursuant to Article 30(2)(b) of the Treaty on European Union the Council shall adopt measures allowing Europol to ask the competent authorities of the Member States to conduct and co-ordinate their investigations in specific cases and to develop specific expertise which may be put at the disposal of Member States to assist them in investigating cases of organised crime,

HAVE AGREED ON THE FOLLOWING PROVISIONS:

Article 1

The Europol Convention is amended as follows:

1. Article 2 is amended as follows:

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

‘1. The objective of Europol shall be, within the framework of cooperation between the Member States pursuant to Article K.1(9) of the Treaty on European Union, to improve, by means of the measures referred to in this Convention, the effectiveness and cooperation of the competent authorities in the Member States in preventing and combating serious forms of [international] crime, where there are factual indications that an organised criminal structure is involved and two or more Member States are affected by the forms of crime in question in such a way as to require a common approach by the Member States owing to the scale, significance and consequences of the offences concerned.’

(b) paragraphs 2, 3 and 5 are deleted;

(c) paragraph 4 is renumbered to paragraph 2.

2. A new point 4 is added to Article 3(2). It shall read as follows:

‘(4) to ask the competent national authorities of the Member States concerned to initiate, conduct or coordinate investigations in specific cases.’

3. A new Article 3a ‘Participation in joint investigation teams’ shall be inserted after Article 3. It shall read as follows:

‘1. Officials of Europol may participate in a support capacity in joint investigation teams set up by two or more Member States, investigating criminal offences for which Europol is competent under Article 2, subject to the conditions set out in the paragraphs below.’

2. When participating in joint investigation teams, officials of Europol may, in derogation of Article 4(2), liaise directly with the members of the joint investigation team. Where, in the course of such direct liaison, information from any of the components of the computerised system of collected information referred to in Article 6, is provided by the official of Europol participating in the joint investigation team to the members of that team, this will be recorded. The national units of the Member States represented in the team as well as of Member States by which the information was provided shall be informed thereof by Europol.
3. Information from a work file set up pursuant to Article 10 with the aim of helping a criminal investigation carried out by a joint investigation team may be transmitted by a liaison officer associated with the analysis group to the participants of the Member State from which he originates in that team.
4. Participation of officials of Europol in a joint investigation team shall be based on an arrangement to be concluded between the Director of Europol and the Member States participating in the joint investigation team. The arrangement shall specify the modalities of such participation.'

3. Article 43 is amended as follows:
 - (a) paragraph 3 is deleted;
 - (b) paragraph 4 is renumbered to paragraph 3

Article 2

1. This Protocol shall be subject to adoption 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 their constitutional requirements for adopting this Protocol.
3. This Protocol shall enter into force 90 days after the notification, referred to in paragraph 2, by the Member State which, being a member of the European Union on the date of adoption by the Council of the Act establishing this Protocol, is the last to fulfil that formality.

Article 3

1. This Protocol shall be open to accession by any State which becomes a member of the European Union if this Protocol has not entered into force on the date of deposit of the instruments of accession to the Europol Convention in accordance with Article 46 of the Europol Convention.
2. Instruments of accession to this Protocol shall be deposited simultaneously with the instruments of accession to the Europol Convention in accordance with 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.
4. If on the expiry of the period referred to in Article 46(4) of the Europol Convention, this Protocol has not entered into force, it will enter into force for the acceding Member State in the date of entry into force of this Protocol in accordance with Article 2(3).
5. If this Protocol enters into force in accordance with Article 2(3) before the period referred to in Article 46(4) of the Europol Convention has expired by after the deposit of the instrument of accession referred to in paragraph 2, the acceding Member State shall accede to the Europol Convention as amended by virtue of this Protocol, in accordance with Article 46 of the Europol Convention.

Article 4

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 information on the progress of adoptions and accessions and also any other notification concerning this Protocol.

Article 5

At the date on which this Protocol enters into force, 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, adopted by Council Act of 30 November 2000 shall be repealed.

COUNCIL

Initiative of the Kingdom of Sweden with a view to adopting a Council Decision extending Europol's mandate to deal with the serious forms of international crime listed in the Annex to the Europol Convention and adding definitions of those crimes the Annex

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 Articles 2(2) and 43 thereof and the Annex thereto,

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

Having regard to the opinion of the European Parliament,³

Having regard to the preparatory work on this issue performed by the Europol Management Board in particular regarding the functional, budgetary and staffing implications for Europol,

Whereas:

1. one of the Union's objectives shall be to provide citizens with a high level of safety within an area of freedom, security and justice by developing common action among the Member States in the fields of police cooperation,
2. the effectiveness of the co-operation within the framework of the Europol Convention would be enhanced if Europol, within certain prioritised areas, could perform its tasks in respect of all aspects of international organised crime,
3. the extension to all forms of crime necessitates the addition to the Annex to the Europol Convention of definitions of organised crime, (as they have been discussed by the Europol Management Board,)

¹ OJ C 316, 27.11.1995, p. 2.

² OJ C

³ OJ C

4. in order to allow Europol to be able to prepare itself sufficiently for the extension of its mandate, it is appropriate to foresee a certain period of time between the adoption of the Decision and its practical application,

HAS DECIDED AS FOLLOWS:

Article 1

Europol's mandate is extended to include the serious forms of international crime listed in the Annex to the Europol Convention

Article 2

The Management Board shall decide which of the serious forms of international crime listed in the Annex to the Europol Convention shall be given priority.

The Director shall permanently inform the Management Board on the implementation of these priorities.

The general report on Europol's activities and the report on Europol's future activities as referred to in Article 28(10)(1) and (2) of the Europol Convention, shall make explicit reference to and reflect the priorities and their implementation.

Article 3

The following definitions of the crimes shall be added to the Annex:

“[– *murder* means intentional and unlawful killing of a person; *grievous bodily injury* means intentional and unlawful infliction of bodily injury, illness or pain upon a person if that act constituted a mortal danger, the offender inflicted grievous bodily harm or severe illness or otherwise displayed particular ruthlessness or brutality,]¹

[– *illicit trade in human organs and tissue* means unlawful trade in or unlawful transfer of human organs and tissue,]

- *kidnapping* means seizure or carrying off or confinement of a person with intent to injure him or her in body or health or to force him or her into service, or to practise extortion; *illegal restraint* means confinement or other unlawful deprivation of liberty of a person; *hostage-taking* means seizure or detain and threat to kill, to injure or to continue to detain a person in order to compel a third party, to do or abstain from doing any act as an explicit or implicit condition for the release of the hostage,
- *racism and xenophobia* means (1) public incitement to discrimination, violence or racial hatred in respect of a group of persons or a member of such a group defined by reference to colour, race, religion or national or ethnic origin; (2) public condoning, for a racist or xenophobic purpose, of crimes against humanity and human rights violations; (3) public denial of the crimes defined in Article 6 of the Charter of the International Military Tribunal appended to the London Agreement of 8 April 1945 insofar as it includes behavior which is contemptuous of, or degrading to, a group of persons defined by reference to colour, race, religion or national or ethnic origin; (4) public dissemination or distribution of tracts, pictures or other material containing expressions of racism and xenophobia; (5) participation in the activities of groups, organizations or associations, which involve discrimination, violence, or racial, ethnic or religious hatred,

¹ The Presidency is of the opinion that it is neither required nor needed to provide definitions for all forms of crime listed in the Annex. Only those forms of crime should be defined where doubts could arise as to the limits of Europol's mandate. For this reason certain definitions have been put between square brackets, indicating that – according to the Presidency – no definition is needed for the relevant form of crime.

- *organized robbery* means theft by means of violence or by threat implying or appearing to the threatened person to imply an imminent danger,

- [– *illicit trafficking in cultural goods, including antiquities and works of art* means unlawful trade in or unlawful transfer of cultural goods, including antiquities and works of art,]

- *swindling* means the act of disseminating misleading information among the public for the purpose of influencing the price of an article, a security or other property; *fraud* means any act or omission that involves deception, misrepresentation or concealment of facts or circumstances or misuse of financial support or benefits if the act leads to unjustified gain for the offender and loss for the other party,

- *racketeering* means demanding, soliciting or receiving anything of value from the owner, proprietor, or other person having a financial interest in a business, by means of either a threat, express or implied, or a promise, express or implied, that the person so demanding, soliciting or receiving such thing of value will: (a) cause the competition of the person from whom the payment is demanded, solicited or received to be diminished or eliminated, or (b) cause the price of goods or services purchased or sold in the business to be increased, decreased or maintained at a stated level, or (c) protect the property used in the business or the person or family of the owner, proprietor or other interested person from injury by violence or other unlawful means; *extortion* means the act of inducing someone, by means of unlawful coercion, to do or not do something which involves gain for the offender and loss for the coerced person or someone represented by the latter; ‘extortion’

- *counterfeiting* means the act of producing a false document or making a new document, by altering an existing document or in any other way altering a genuine document; *product piracy* means the act of unlawful production, transfer or trade of copies of products of a certain trademark or which are produced by a certain person or company,

[– *forgery of administrative documents and trafficking therein* means the act of counterfeiting administrative documents and the transfer, selling or buying of them,]

- *forgery of money and means of payment* means (a) any fraudulent making or altering of currency, whatever means are employed; (b) the fraudulent uttering of counterfeit currency; (c) the import, export, transport, receiving, or obtaining of counterfeit currency with a view to uttering the same and with knowledge that it is counterfeit; (d) the fraudulent making, receiving obtaining or possession of instruments, articles, computer programs and any other means peculiarly adapted for the counterfeiting or altering of currency, or holograms or other components of currency which serve to protect against counterfeiting. – The conduct referred to in (a)-(d) applies also with respect to banknotes or coins being manufactured or having been manufactured by use of legal facilities or materials in violation of the rights or the conditions under which the competent authorities may issue currency, without the agreement of those authorities. – The conducts referred to applies also with respect to the future banknotes and coins of the euro and is committed before 1 January 2002 or to banknotes and coins which are not yet issued but are designated for circulation, and are of a currency which is legal tender,
- *computer crime* means acts whereby the offender infringes the privacy of a natural or legal person by means of a computer or spreads unlawful information by means of a computer and acts such as computer hacking/cracking, computer espionage, software, computer sabotage and computer fraud,
- *corruption* means (1) the promising, offering or giving by any person, directly or indirectly, of any undue advantage to any person listed in (3) for himself or herself or for anyone else, for him or her to act or refrain from acting in the exercise of his or her functions, and (2) the request or receipt by any person listed in (3) directly or indirectly, of any undue advantage, for himself or herself or for anyone else, or the acceptance of an offer or a promise of such advantage, to act or refrain from acting in the exercise of his or her functions. – (3) The rules in (1) and (2) applies to: (a) domestic and foreign public officials, (b) members of public assemblies exercising legislative or administrative powers, (c) persons who direct or work for, in any capacity, private sector entities in the course of business activity,

(d) officials or other contracted employees of international or supranational organizations, (e) members of parliamentary assemblies of international or supranational organisations of which the Party is a member, (f) judges and officials of international courts,

[– *illicit trafficking in arms, ammunition and explosives* means unlawful trade in or unlawful transfer of arms, ammunition or explosives,]

[– *illicit trafficking in endangered animal species* means unlawful trade in or unlawful transfer of endangered animal species,]

[– *illicit trafficking in endangered plant species and varieties* means unlawful trade in or unlawful transfer of endangered plant species and varieties,]

– *environmental crime* means (1) the discharge, emission or introduction of a quantity of substances or ionising radiation into air, soil or water which causes death or serious injury to any person, (2) the unlawful discharge, emission or introduction of a quantity of substances or ionising radiation into air, soil or water which causes or is likely to cause their lasting or substantial deterioration or death or serious injury to any person or substantial damage to protected monuments, other protected objects, property, animals or plants, (3) the unlawful disposal, treatment, storage, transport, export or import of hazardous waste which causes or is likely to cause death or serious injury to any person or substantial damage to the quality of air, soil, water, animals or plants, (4) the unlawful operation of a plant in which a dangerous activity is carried out and which, outside the plant, causes or is likely to cause death or serious injury to any person or substantial damage to the quality of air, soil, water, animals or plants, (5) the unlawful manufacture, treatment, storage, use, transport, export or import of nuclear materials or other hazardous radioactive substances which causes or is likely to cause death or serious injury to any person or substantial damage to the quality or air, soil, water, animals or plants,

[– *illicit trafficking in hormonal substances and other growth promoters* means unlawful trade in or unlawful transfer of hormonal substances and other growth promoters.]”

Article 4

This Decision shall enter into force the day following its adoption by the Council. It shall apply from 00.00.0000.

As from the date of entry into force of this Decision, the decisions and acts necessary to implement this Decision can be adopted. They shall not take effect before the date on which this Decision shall become applicable.

At the date on which this Decision becomes applicable, the Council Decision of 29 April 1999 (1999/C 149/02) extending Europol's mandate to deal with forgery of money and means of payment¹ shall be repealed.

Article 5

This Decision shall be published in the Official Journal.

Done at Brussels, 00.00.0000.

For the Council

The President

¹ OJ C 149, 28.5.1999, p. 16-17