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The activities and development of Europol: towards an unaccountable FBI in Europe

by Ben Hayes

EU governments signed the Europol Convention in July 1995. Four months later, *Statewatch* published the first publicly available draft of the text together with a detailed analysis to encourage open debate on the issues it raised. Six years later, this Convention is being rewritten to give Europol operational powers and a much wider remit and open debate needs as much encouragement as ever. A new report from *Statewatch* examines the key developments and critical issues.

Key issues

❍ Under the Convention Europol was set up to act as both a 'clearing house' for bilateral and multilateral exchanges of data and as curator and custodian of a central EU intelligence database on organised crime, and when it was agreed every opportunity was taken to stress this non-operational constitution. But by next year, Europol officers will be participating in joint investigation teams operating in two or more EU member states.

❍ It is clear that Europol has operated, since its creation as the Europol Drugs Unit in 1993, within the widest possible interpretation of its legal basis and that restrictions have probably been disregarded at times. This is because of ambiguity in the original agreement, minimal supervision of its implementation and a lack of independent scrutiny and management. Europol's development has been tarnished by several alleged incidents of corruption.

❍ The member states have increased Europol's budget year-on-year since 1994, and from an initial staff of 18, 260 posts will be funded in 2002, with at least another 60 liaison officers seconded from the member states.

❍ Some 17 forms of crime have been added to Europol's competence, replacing the original "crime related approach" with a broad, proactive and unregulated mandate.

❍ Europol has extensive powers to collect and store information on individuals and categories of people but the data protection regime may fail to guarantee the enforcement of established human rights and privacy laws. In amending the Convention, these rules may be weakened further.

❍ The Council of the European Union has begun approving a series of cooperation agreements that will allow another 23 non-EU states and agencies to exchange data with Europol. Its relationship with other existing and planned EU law enforcement offices and databases will effectively extend its powers further.

❍ Fostering EU-wide cooperation in organised crime investigations was the rationale behind Europol, but while its role is being expanded, it appears that some national police forces appear reluctant to accept their obligation to share intelligence and may prefer to cooperate bilaterally on a case-by-case basis.

❍ In May 2001, the Swedish Presidency of the EU acknowledged "murmurs of discontent" over the democratic control of Europol, all of which stemmed from the weak provisions in the original Convention. However, the European Parliament remains on the margins of the decision-making process and the Council has proposed that future amendments of the Europol Convention should no longer require ratification by the 15 national parliaments. Revisions will simply be implemented after unaninimous agreement in the EU Council of Ministers.

❍ In December, the Belgian presidency proposed a wider competence for the European Court of Justice over the interpretation and implementation of the Europol Convention. However, Europol will continue to enjoy far-reaching immunities from the legal process and is not subject to various regulatory controls on policing usually found at the national level.

Ben Hayes of *Statewatch* comments:

"The vast extension of Europol's mandate, the framework for joint investigation teams and the EU Convention on mutual legal assistance in criminal matters provides a logical and practical basis for the development of an informal and unaccountable "EU-FBI". Few people should need reminding that all law enforcement agencies, even those in their infancy, must be democratically controlled and fully accountable to the courts".

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The activities and development of Europol - towards an unaccountable "FBI" in Europe

Covers: history and development; operational activities and powers; mandate and competence; approaches to specific forms of crime; problems at Europol; relationship with other EU agencies; management, judicial control and democratic accountability; the decision-making process; the Europol "acquis" of texts adopted; budgets and staff; proposed amendments to the Convention.

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