



The activities and development of Europol

- towards an unaccountable "FBI" in Europe

Ben Hayes

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The Europol Convention, by Tony Bunyan (November 1995) is still available £5.00.

It contains the full-text of the Europol Convention, the Joint Action on the Europol Drugs Unit (15 March 1995) and the Ministerial Agreement on the Europol Drugs Unit (3 June 1993) plus a Commentaries, Chronology and Bibliography.

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Contents:

| | |
|---|----|
| Introduction | 2 |
| Intelligence | 3 |
| Operational activities and powers | 6 |
| Mandate and competence | 8 |
| Approaches to specific forms of crime | 9 |
| Problems at Europol | 11 |
| The Europol network | 12 |
| Management, judicial control & democratic accountability | 16 |
| Decision-making | 17 |
| Key issues | 18 |
| Appendix 1: The Europol 'acquis' | 19 |
| Appendix 2: Europol budgets and staff | 20 |
| Appendix 3: Analysis of proposed amendments to the Europol Convention | 21 |
| Appendix 4: Definition of crimes within the Europol remit | 23 |
| Notes | 26 |

1. INTRODUCTION

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 to be rewritten to give Europol operational powers and a much wider remit and open debate needs as much encouragement as ever. This report looks at Europol's activities and development, related EU measures, and the current proposals.

Europol's origins

The Europol Convention entered into force in October 1998, following ratification by the EU's 15 national parliaments. Europol "officially" became operational in June 1999.

Nine years earlier, in June 1990, a European Drugs Intelligence Unit had been set-up under the intergovernmental TREVI framework. It was renamed the Europol Drugs Unit (EDU) by TREVI ministers in December 1991 and a week later the European Council of EC governments agreed that the creation of Europol should be part of the Maastricht treaty.

An embryonic office and staff was set-up in Strasbourg in January 1993 and in June a ministerial agreement gave the EDU a formal legal basis. In October 1993, The Hague, in the Netherlands, was chosen ahead of Weisbaden, Germany, and Rome, Italy, as the location for the Europol headquarters. The Dutch minister of justice formally opened Europol's offices for business on 16 February 1994.

The development of Europol

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. At the same time, Europol has been the subject of constant legislative development.

Before the Europol Convention had even been signed, the EDU's mandate was extended from drugs to trafficking in human beings, illegal immigration networks, trafficking in radioactive substances and vehicle crime. Then some 20 sets of rules and regulations to implement the Convention were agreed (including those on external relations, data collection and storage, and immunities for Europol officers). Four more crimes have been added to the Europol remit since it officially became operational in 1999 and, at the time of writing, the EU has just reached 'political agreement' on the addition of another 17.

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, 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.

The EU has also 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.

"Murmurs of discontent"

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. Two months later, more murmurs, after Europol HQ was raided by the Dutch police and a French Europol officer was arrested in connection with alleged fraud and money-laundering offences.

EU governments have since embarked on a general overhaul of the Convention that will increase Europol's powers and, as current negotiations stand, widen the gulf in accountability. The issues of judicial and democratic control of Europol have been raised by the last two EU presidencies, but have not yet found their way onto an agenda now pre-occupied with increasing law enforcement powers after the events of 11 September.

2. INTELLIGENCE

Europol's has two primary intelligence functions – to facilitate bilateral and multilateral exchanges of data and the creation of a central EU intelligence database. By 2002, Europol will employ 62 intelligence analysts, 56 technology staff and 64 organised crime specialists.

Intelligence exchange

Police in one EU state, through their Europol National Unit (ENU), can make requests to Europol for intelligence, practical information regarding investigations or specific operational support. Europol began handling intelligence as soon as the provisional Europol Drugs Unit was established in 1994 and had processed more than 60,000 requests and responses by the end of 2000. According to figures (below) taken from Europol annual reports the vast majority of these contained investigative support data.

The ratio of responses to requests is almost four-to-one with single enquiries to Europol able to trigger a chain of events. Europol's annual report for 1999 notes that one request "led to: 40 additional requests, which in their turn triggered 227 responses; 2 controlled deliveries; 5 surveillance operations; 20 requests for judicial assistance". Data exchanged will be indexed in a central database that will go online during 2002 (see over) giving Europol a dynamic and ever-increasing database of supposition, suspects and operational intelligence.

It is not mandatory for member states police forces to use Europol for intelligence exchange, and it is quite possible that they may prefer not to (see page 11). They can also use unregulated bilateral channels (under informal agreements or memoranda of understanding) and international systems such as the "Sirene Bureaux" (under the Schengen framework), EU liaison networks that have been created to deal with offences currently outside Europol's remit (football hooliganism, public order and cybercrime¹) or Interpol.

Requests to EDU/Europol from EU member states²:

| year | Number of requests | Nature of request (%) | | | No. responses generated |
|-------------------|--------------------|--------------------------------------|-------------------|---------------------|-------------------------|
| | | Investigative support (intelligence) | special expertise | Operational support | |
| 1994 | 595 | 81 | 14 | 5 | Not given |
| 1995 | 1474 | 77 | 16 | 6 | 4671 |
| 1996 | 2053 | 78 | 16 | 6 | 6327 |
| 1997 | 2608 | 82 | 12 | 6 | 8964 |
| 1998 | 2298 | 85 | 10 | 5 | 9782 |
| 1999 ³ | 1998 / 2180 | 87 | 9 | 4 | 9285 / 9969 |
| 2000 | 1922 | 91 | 7 | 2 | 9409 |

Offences concerned:

| year | drugs (% of total requests) | money laundering (%) | Illegal immigration networks (%) | Vehicle crime (%) | trafficking in human beings (%) | trafficking in nuclear substances (requests) |
|------|-----------------------------|----------------------|----------------------------------|-------------------|---------------------------------|--|
| 1995 | 76 | 12 | 4 | 8 | - | - |
| 1996 | 71 | 13 | 8 | 8 | - | 4 |
| 1997 | 61 | 9 | 19 | 8 | 3 | 8 |
| 1998 | 60 | 8 | 15 | 13 | 4 | not given |
| 1999 | 55 | 7 | 16 | 15 | 4 | not given |
| 2000 | ----- not given ----- | | | | | |

Intelligence collection

Europol has an umbrella, or 'hub-spoke' structure, closely resembling that of the UK's National Criminal Intelligence Service (NCIS)⁴. NCIS also has an organised crime mandate and UK police forces, crime squads and other law enforcement agencies supply it with whatever intelligence they believe is relevant. Europol is supposed to work in much the same way, but relies on the national criminal intelligences services in the member states.

Analysis work files

On becoming operational, Europol could begin constructing detailed and extensive collections of intelligence around a specific theme or investigation in "analysis work files" (AWFs). These are also to be indexed and stored in the Europol computer system. The first file was created in September 1999; the latest Europol annual report refers to 11 analysis files running in 2000, more were proposed in 2001. They are expected to lead to "operational outcomes".

Among those created or proposed are files concerned with:

Open⁵

- illegal immigration from Iraq
- illegal immigration from a "specific province in China"
- "extremist Islamic terrorism" in the EU
- Latin American drug smuggling groups (two separate files)
- outlaw motorcycle gangs
- counterfeiting of currencies

Proposed

- "eco-terrorism"
- "Crime committed by nationals of West Africa, particular Nigeria, in the EU"⁶

Analysis files can contain information on actual and *potential* suspects, witnesses, victims, contacts, associates and informants; suspected and alleged offences; modus operandi and suspected membership of a criminal organisation; convictions, and references to investigations by national police forces. The regulations on AWFs, agreed two years after the Convention, allow Europol to collect 53 specific types of personal data, including the sensitive information that had initially been omitted from the Convention because of political disagreements: data on "racial origin, religious or other beliefs, sexual life, political opinions or membership of movements or organisations that are not prohibited by law". Categories include "personal details" (fourteen types of data), "physical appearance" (two types), "identification means" (five types, including DNA and fingerprints), occupation and related qualifications (five types), "economic and financial information" (eight types) and "behavioural data" (eight types)⁷.

The extent of the personal data that Europol can collect, coupled with discretion over who can be included in their files, mean that holding information on an individual is not really based on any 'legal category', but rather a police decision based on the efficiency and perceived value of doing so.

Member states have an obligation under the Convention to contribute their relevant intelligence to Europol analysis files, but can withhold intelligence on a broad range of grounds (national security, protecting investigations, personal security, or specific intelligence activities, Article 4(5), Europol Convention).

The 2000 annual report notes that "in one particular Analysis Work File, up to 100,000 pieces of data were transmitted via the liaison officers". However, other files are known to be seriously "malfunctioning" because of a lack of data from the member states (see page 11). In amending the Convention, officials hope to "clarify the legal obligation to supply information to Europol, unless the exceptions of article 4(5) apply"⁸.

The Europol Computer System

Technical development of the extensive Europol computer system (TECS) has been underway since 1996. TECS will run three interlinked systems:

- (i) a central information system;
- (ii) Europol analysis work files;
- (iii) a central index system alerting users to references in analysis work files without disclosing their content.

The central information system will hold data on crimes and alleged crimes, people convicted and suspected of offences, and any relevant content from the requests and responses sent via Europol. It can be accessed by the Europol national units (located in the criminal investigation agencies within the member states) and Europol staff. The information system will 'go live' at the end of 2001. Initially it will only cover intelligence data concerning counterfeiting of the euro, but will become fully operational during 2002. "Widened access to the information system" based on "simple hit notifications for users that do not belong to the [Europol] national units" has been proposed⁹.

Access to data files is granted on a "need to know" basis and subject to data protection provisions. Only Europol

and the liaison officers have access to the analysis work files. TECS' capacity is up to 5,000 analysis files and up to one million records in the index system¹⁰. By the end of 2002, the TECS project will have received over 45 million euros (£27 million).

Cooperation with third states and bodies

The Europol Convention also allows information to be requested, or given voluntarily, from third countries, other EU/EC agencies, bilateral or multilateral organisations within the EU, international organisations/bodies and Interpol¹¹. In short, the rest of the global law enforcement 'community'. This cooperation is reciprocal, with Europol able to send intelligence the other way as long as it can demonstrate that the receiving state or body has an adequate level of data protection.

The first cooperation agreement, with Interpol, was signed in Brussels on 8 November 2001. Agreements with Norway, Iceland, Poland, Hungary, Estonia and Slovenia have been approved by the EU Council and await conclusion¹². Preliminary data protection reports on Switzerland and the Czech Republic are on the table and negotiations with Bulgaria, Latvia, Lithuania, Malta, Slovakia, Cyprus, Poland, Turkey, Malta, USA, Canada, the Russian Federation, the World Customs Organisation and relevant UN agencies are underway. Following the terrorist attacks in America, EU justice and Home Affairs ministers agreed that Europol's agreement with the USA should be fast-tracked¹³.

Rules on the transmission of data by Europol stipulate that third parties are not allowed to pass on the data to any other states or agencies¹⁴. However, before these rules came into operation, an amendment to allow the Europol Director to authorise onward transmission by third states was proposed (the member state who supplied the data must give their consent). The proposal would also remove the obligation on Europol to supply information to data protection supervisors concerning their assessment of the need to transmit data to third states/bodies on a case-by-case basis¹⁵.

The cooperation agreements contain a much broader definition of "personal data" than the Europol Convention, which covers the scope of the analysis work files: "any information", on any real or identifiable persons, including identification numbers and "factors specific to his physical, physiological, mental, economic, cultural or social identity"¹⁶. Although the data protection provisions appear comprehensive on paper, and include tests and safeguards on the integrity of data, these may easily be circumvented in practice¹⁷. According to a Europol deputy director "[t]he pressure to exchange data with [third] countries in the interests of mutual assistance might well in practice outweigh considerations of strict data protection"¹⁸.

Data protection reports on third countries are equally superficial. A Norwegian *Statewatch* contributor commenting on the report on data protection in the police sector in Norway said it focused only on the legal framework, completely ignoring the actual practice:

"It is utterly superficial, operating completely on the surface of things, only taking into account strictly formal matters and the letter of the law. There is nothing on practice, except that they take statements from Norwegian authorities as objective facts. We know, for example, that the Norwegian Data Inspectorate does not have sufficient resources to control in a regular manner the work registers [databases] of the police. This has been reported in the press. The registers contain large amounts of information that should not be there. We know that the police are virtually without control from the outside concerning the now formidable building up of work registers (where subjects generally are barred from information of data relating to themselves, based on so-called temporary regulation) containing vast amounts of information which now are loaded into the SIRENE system. These are factual aspects of the situation as far as practice goes in Norway today, and totally disregarded in the report.

In sum, the report is a shallow statement about mere formalities, containing nothing about practice (and no in depth legal analysis either, for that matter)."

Under the third state/agency agreements, cooperation is not limited to intelligence exchange, but "**may involve all other tasks of Europol mentioned in the Europol Convention**"¹⁹.

The Norwegian Parliament will vote in December 2001 on whether Norway should accede to the Convention. Although the country voted against joining the EU in a referendum, it participates in some justice and home affairs measures under a protocol to the Amsterdam Treaty.

3. OPERATIONAL ACTIVITIES & POWERS

"I cannot even see over the horizon any kind of operational arm for Europol"

A. Pacey, Director General, UK National Criminal Intelligence Service, February 1995²⁰.

Europol has had a hand in cross-border investigations since its creation as the EDU. The term "operational" has been ambiguous from the outset, and it was "expected that the Europol National Units" would "use the facilities of the EDU to support ongoing investigations, without itself being operational"²¹.

Europol dealt with at least 600 requests for specific operational support between 1994 and 2000 (see page 3), including the coordination of surveillance of drugs or 'illegal immigrants' in transit ("controlled deliveries"), ensuring that the "competent observation team takes over the surveillance activities as soon as the target(s) cross the border". A 24-hour channel for national forces to make urgent arrangements for surveillance and controlled deliveries was created in the EDU in 1994.

By 1998, Europol appears to have become stretched to its operational capacity, with the report on the year's activities calling for member states not to involve the EDU/Europol in cross-border operations that only involve two member states (these were instead to be treated bilaterally).

Controlled deliveries

The 1990 Convention implementing the Schengen Agreement, encouraged by the 1988 UN Convention on drug trafficking, stipulated that monitored deliveries of illegal goods should be allowed to take place - the idea being that the surveillance will lead to the capture of the 'masterminds'²².

Controlled delivery operations require a prior agreement between the competent authorities of each state involved, and domestic authorities have control over operations on their own territory. Although originally tied to drugs, these operations can involve the controlled delivery of any illicit traffic (eg. people, guns, counterfeit or stolen goods).

In 1996 the EU Council tasked Europol with producing a manual on controlled deliveries for national police forces. This set out an operational protocol, the procedures and techniques applied in each country, legal obligations, communication channels, contact points and the role of the EDU which, according to the June 1998 manual leaked to *Statewatch*, was "**a European platform for the support of ongoing operations in respect of organised crime, including controlled deliveries.**"

It cites a number of benefits for national investigators using this "platform": "the unique benefit of having their representatives permanently based at the EDU, each operating under the direction of his or her national unit"; office space, equipment and technical facilities; translation facilities; the presence of "representatives of different law enforcement agencies" (ELOs [Europol Liaison Officers]) (police, customs, gendarmerie, coastguard etc); the "possibility of exchanging "soft" information; and respect for "sovereignty and subsidiarity"²³. According to Europol's annual reports, it was involved in 253 controlled delivery operations between 1996 and 1999.

Controlled deliveries involving Europol (figures not given in 2000 annual report):

1996 - 33

1997 - 62

1998 - 46

1999 - 112 (7 of which concerned illegal immigration/human trafficking)

The controlled deliveries manual cited above was produced before the Europol Convention had entered into force and refers to article 2(3) of the 1995 EU Joint Action on the EDU: "The objective of the [EDU] is to help the Police and other Member States to combat the criminal activities [within the EDU mandate] more effectively"²⁴. However, as a legal basis for controlled delivery operations at the EDU, it is perhaps contradicted by the previous paragraph of this agreement: "**The [EDU] shall act as a non-operational team for the exchange and analysis of information and intelligence**" (article 2(2), emphasis added).

There was no specific locus in the Convention or supplementary legislation either, or even any vague reference to an operational platform at Europol. Discussions on amending the Europol Convention have tacitly acknowledged the status quo and suggest "clarifying Europol's competence in providing technical support to Member States' operations"²⁵.

Operational powers

Europol agents were not given any formal operational powers. They can receive, disseminate and analyse intelligence, coordinate and "support" joint investigations, but cannot undertake investigative practices in the member states. Europol liaison officers are seconded from member states and can act within the scope of their domestic statutory powers.

The Convention actually restricted Europol officers' potential operational role further by preventing them, at least on paper, from liaising directly with national law enforcement agencies. "**The [Europol] national unit shall be the only liaison body between Europol and the competent national authorities**", declares Article 4(2).

Joint investigation teams

Joint investigation teams, comprising Europol agents and police or other agencies from the member states, featured in the plans for Europol but were omitted and included instead in the EU Mutual Legal Assistance (MLA) convention, which was signed in June 2000 after five years of negotiations²⁶.

The MLA Convention provides a framework for police and judicial cooperation and procedure, including the interception of telecommunications, controlled deliveries, covert investigations, joint investigation teams, the exchange of information, custodial transfers and court hearings by video/telephone conference. The rules on joint teams cover the powers and liability of police officers operating in another member state. Joint teams are "set up" in one member state and can operate in all the countries participating in the investigation. Police officers from outside the member state where the team is working are regarded as seconded to the competent domestic authorities and can be present when investigative measures and operational activities occur. The leader of the investigation comes from the state that set up the team, but the team must always work in accordance with the laws of the state in which they are operating. Lines of authority and accountability appear blurred to say the least²⁷.

Under the MLA convention, "other representatives" are allowed to participate in joint teams with the consent of the member states involved²⁸. This provision paved the way for Europol's (and other law enforcement agencies) participation and at the Tampere summit in October 1999 EU justice ministers agreed to develop specific proposals to enable Europol to "support" joint teams²⁹.

In November 2000 the Council of the EU adopted a Recommendation on Europol's "assistance" to joint teams - it should organise the joint team's intelligence, coordinate its operations, provide technical advice and analyse the case³⁰. This was followed by a proposal to rewrite the Convention and allow Europol agents to "participate in a support capacity in joint investigation teams... [and] in derogation of Article 4(2), liaise directly with the members of the joint investigation team"³¹.

Europol is also to be empowered to "ask the competent authorities of the Member States to initiate, conduct or coordinate investigations in specific cases". If they refuse, the member states must, in writing, inform Europol of their reasons for doing so. In 2002 Europol will draw up an operational manual for joint teams³².

Is Europol participating already?

No member state has yet ratified the MLA convention, but following the terrorist attacks in the US, Belgium, Spain, France and the UK proposed an EU Framework Decision that will allow the provisions on joint investigation teams to come into force in December 2001³³. The proposal was not restricted to terrorist offences, also covering trafficking in human beings and drugs, but just three weeks before it was scheduled for adoption, the permanent representatives of the four member states behind the draft Framework Decision have declared that it should fully replicate the provisions in the MLA Convention, allowing joint teams to be set-up for **any** "criminal offences [that] require difficult and demanding investigations having links with other Member States"³⁴.

Europol's participation still requires amendment of the Convention but their work programme for 2002 states that in all areas of Europol's competence "operational projects and activities shall slightly increase" and in operational departments some of the 2002 budget "will be reserved for the establishment of joint investigations and joint teams"³⁵. This is despite the certainty that national parliaments will not be able to ratify the necessary amendments during 2002.

The budget could be pre-empting the legislation because *de facto* joint teams are already a reality at Europol. A Europol 'position paper' on joint investigation teams dated February 2000 stated: "**this form of joint team cooperation is taking place on a nearly day to day basis, with or without participation of Europol officials**"³⁶.

Amendment of the Convention and participation in joint teams will not allow Europol officers to undertake "investigative practices" (surveillance, arrest etc) in the member states, but they can be present when they occur.

4. EUROPOL'S MANDATE & COMPETENCE

Europol's mandate has been extended a number of times, on each occasion without any prior objective assessment of its efforts and achievements. The Europol Drugs Unit's had its initial remit of international drugs trafficking extended in 1995 to trafficking in nuclear and radioactive substances, illegal immigrant smuggling, trade in human beings and stolen cars³⁷. Terrorist activities were added when Europol became operational in July 1999³⁸.

An extensive list of possible future competences were listed in an annex to the 1995 Europol Convention, and the Council of the European Union (the EU governments) could decide unanimously to make Europol competent to deal with any of them, or to redefine the scope of crimes to include new offences without any parliamentary scrutiny. To date, the Council has added the counterfeiting of currency, payment card fraud (in 1999³⁹), and all forms of money laundering (2000⁴⁰), and redefined "trafficking in human beings" to include child pornography (1999)⁴¹. Proposals to add "cybercrime"⁴² and discussions on fraud and environmental crime were then joined in June this year by a proposal to add all the crimes in the annex at a single stroke⁴³. This was agreed in principle at the 27-28 September 2001 EU justice and home affairs Council.

Another possible extension of Europol's mandate, to cover public order offences, was proposed at a special 'summit-security' meeting of EU justice and home affairs ministers after the demonstrations in Gothenburg in June 2001. It called for Europol to be tasked with producing "analyses of violent disturbances, offences and groups"⁴⁴. So much for the *raison d'être* of organised crime.

Europol's mandate: current and future

| <u>Date</u> | <u>Offences</u> (see page 23 for definitions) |
|------------------|---|
| 1993 | Drugs |
| 1995 | Trafficking in nuclear and radioactive substances |
| 1995 | Illegal immigration |
| 1995 | Trafficking in human beings |
| 1995 | Motor vehicle crime |
| 1999 | Terrorism |
| 1999 | Counterfeiting of currencies |
| 1999 | Payment card fraud |
| 1999 | Child pornography (through redefinition of trafficking in human beings) |
| <u>Proposed:</u> | Cybercrime |
| | Fraud |
| | Environmental crime |
| | Murder, grievous bodily injury |
| | Illicit trade in human organs and tissue |
| | Kidnapping, illegal restraint and hostage-taking |
| | Racism and xenophobia |
| | Organised robbery |
| | Illicit trafficking in cultural goods, including antiquities and works of art |
| | Racketeering and extortion |
| | Counterfeiting and product piracy |
| | Forgery of administrative documents and trafficking therein |
| | Corruption |
| | Illicit trafficking in arms, ammunition and explosives |
| | Illicit trafficking in endangered animal species |
| | Illicit trafficking in endangered plant species and varieties |
| | Illicit trafficking in hormonal substances and other growth promoters |

Competence

For Europol to have competence to deal with a suspected or actual offence within its mandate there must be "**factual indications that an organised criminal structure is involved and two or more member states are affected**" (article 2(1) Europol Convention, emphasis added). However, this may not limit Europol's attention

to the "serious forms of international crime" in the way that the Convention suggests. A "criminal organisation" has been very broadly defined in EU legislation (effectively as two or more *suspects* working together⁴⁵) and it would seem that as EU integration deepens (and widens) it will become easier to suggest that criminality based in one member state adversely affects the others. In any case, the Belgian presidency has proposed that when the Convention is rewritten references to "factual indications" of organised crime be replaced by a wider competence of **"combating serious crime, particularly when it is organised"**⁴⁶.

The scope offered by the ambiguity in the original definition of Europol's competence was taken up in the Europol "controlled delivery" manual which contains "safety net" principles based on the broadest possible interpretation of the Convention⁴⁷. According to the Netherlands' CRI (Dutch central intelligence agency) "some member states frequently violate the rules" that two member states must be affected when making requests for intelligence through Europol⁴⁸. The proposal in July 2001 to open an analysis file on "Crime committed by nationals of West Africa, particularly Nigeria, in the EU" does refer to "organised crime", but appears equally concerned with "other crimes"⁴⁹.

From 'reactive' to unregulated policing

Europol officials have argued for the fullest extension of their mandate, claiming the "crime-related approach" (where Europol is tasked with specific crimes), "has led to major hindrances" since law enforcement agencies intending to work with Europol "are each time confronted with the uncertainty whether Europol is competent or not"⁵⁰. The solution: rather than address certain forms of criminality, Europol should be competent to deal with any criminal activities it encounters in the course of its activities. Regardless of the legislative situation, Europol's "activities will be steered progressively using a more criminal organisation direction" during 2002⁵¹.

The extension of Europol's mandate to all "serious crime" represents a fundamental change in the operational nature and scope of the agency: from *reactive* policing (responses to specific offences such as international drug trafficking) to *proactive* policing (self-regulated).

Europol produces the EU's annual situation report on "organised crime" (based on very broad definitions⁵²) as well as strategic (non-operational) analyses on specific 'organised crime' phenomena (these are often the basis for the opening of an analysis work file). These analyses and a proactive remit effectively allow the agency to set the EU crime prevention agenda: defining both the 'threats' and the initiatives to counter them.

Both strategic analyses and work files **"work on the express assumption that organised crime groups are ethnically based"**⁵³. This is a controversial evaluation as to the 'frontline' of organised crime (and blatantly disregards the 'special protection' given to data on racial origin in international data protection law).

5. APPROACHES TO SPECIFIC FORMS OF CRIME

Drugs

Europol's analysis of trends in drug trafficking includes statistical and quantitative data on arrests and seizures, countries of origin, methods of transport, criminal groups involved and the production of drug precursors. It produces an annual EU situation report on drug trafficking for the member states on the basis of this analysis.

A drug purity and price index was established in 1995, and a database containing the designs of seized MDMA ("ecstasy") tablets was also set up. In 1996 an EU Joint Action placed an obligation on the member states police forensic services to transmit profile data (type, quantities, pictures etc.) of all drugs seized by their authorities to the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA) which was created in 1993.⁵⁴

Plans are underway to set up central EU laboratories to which the member states will be obliged to transmit samples from all large seizures. The aim is to cross check 'street' seizures with seizures at production sites across Europe. Agreement was reached recently on the transmission of samples, but provisions that would have required member states to send "the related criminal intelligence or investigative data to Europol" were dropped from initial drafts⁵⁵. A recommendation that the member states use a detailed Europol data collection model to harmonise law enforcement statistics on drugs is also on the table⁵⁶.

Illegal immigration

Europol has been "handed over" a Schengen Task Force "project concerning illegal immigration from Iraq and neighbouring countries" (a joint operation involving authorities from some or all of the Schengen states)⁵⁷ and at least two other operational projects are underway: one on falsified documents and another on illegal immigration

of Ukrainians and Moldavians⁵⁸.

Europol is also running at least two analysis files on illegal immigration and produces quarterly "intelligence bulletins" and annual situation reports on illegal immigration networks/trafficking for the member states.

Recent media interest in a "European border police" is also relevant to Europol⁵⁹. The EU discussions are actually based on joint teams of police and immigration officials posted to external borders or third countries to combat immigration routes. EU member states already post liaison officers abroad and a formal network is to be created. Teams of police and immigration officers have already begun "joint operative actions against certain identified crime threats including actions along the future external border of the EU" in multilateral projects outside the EU framework⁶⁰. Justice and home affairs ministers have called for 'EU immigration liaison officers' to transmit any intelligence gathered to Europol⁶¹.

The European Commission is equally committed to giving Europol a central role and in its communication of November 2001 on a common EU illegal immigration policy suggested that: "Europol should be given more operative powers to enable them to work with national authorities on trafficking or smuggling of human beings"⁶². The proposed EU framework decision on joint investigation teams (see page 7), which is being fast-tracked as part of an "anti-terrorism" programme, also covers drugs and illegal immigration.

Terrorism (and public order?)

By the time EU justice ministers reported political agreement in May 1998 that Europol should take up counter-terrorism activities as soon as it became "operational" (July 1999), eight Member States had already volunteered 10 intelligence officers to form a preparatory Europol group on terrorism.

Europol services to the member states include a store of legislation for research and analysis, a directory of responsible agencies and centres of excellence in the member states and a glossary of terrorist groups. According to the annual report for 2000, "the most remarkable operational development was the fact that two projects to support specific investigations were initiated"⁶³.

During 2000 Europol opened an analysis file on "extremist Islamic terrorism" and another on "eco-terrorism" was proposed. After the attacks on New York and Washington in September 2001 EU justice ministers agreed on the creation of "a team of counter-terrorist specialists in Europol to which member states are invited to appoint liaison officers from their police and intelligence services" (Europol itself already has seven counter-terrorist officers). Current action plans call for EU member states to agree on a list of 'proscribed' terrorist organisations (a proposal only previously supported by the UK and Spain) maintained by Europol with the assistance of the member states. It will presumably include those groups and individuals with whom financial transactions have already been forbidden under emergency EC legislation, and those on the UK's list of banned organisations⁶⁴.

Terrorism is the only criminal offence that Europol is competent to deal with that was not defined in the Convention or supplementary EU Decisions, because of the perceived difficulty agreeing it and the crossover with the 'political offence' exception to extradition treaties⁶⁵. After the attacks in the US the European Commission brought forward a planned proposal for an EU Framework Decision on terrorism which would cover protests and "urban violence" and has been criticised by civil liberties and human rights groups⁶⁶.

In February 2001, a Europol seminar on counter-terrorism was held in Madrid. According to the Spanish daily *El Pais*, it agreed a proposal from Spain, Portugal, Greece and Italy to set-up a joint investigation team on "anarchist terrorism" and proposed a common EU strategy on paying informers in third countries⁶⁷. The General Secretariat of the Council has refused to release any documents relating to the seminar under EU rules on public access, resulting in a formal complaint to the European Ombudsman by *Buro Jansen & Janssen* (Amsterdam)⁶⁸.

Officials have denied that Europol has been collecting intelligence on protest groups – which do not fall within its remit – but their claims would almost certainly be at odds with the creation of analysis files on "eco" or "anarchist" terrorism. In an interview with a German newspaper, Europol's director Jurgen Storbeck suggested that the so-called "black block" of anarchists involved in the Genoa demonstrations in July 2001 could be conceived as "terrorist or pre-terrorist", giving the agency a legal basis for collecting intelligence⁶⁹. (Whatever "pre-terrorist" means, it is not a term that has a legal basis in the Europol Convention.)

If Europol officers have not already concerned themselves with protest groups and demonstrators, it seems certain that they soon will. Operational planning on security at EU and other international summits now identifies a joint threat: terrorist attack and violent disorder. Tasking Europol with providing intelligence on "violent disturbances, offences and groups" is part of contingency plans⁷⁰.

Financial crime

Under a 1991 EC Directive all member states were obliged to designate or set-up Financial Intelligence Units (FIUs) in a network "to establish links between suspicious financial transactions and underlying criminal activity in order to combat money laundering"⁷¹. The Directive placed an obligation on banks and financial institutions to report "suspicious" transactions to the FIUs. An agreement last year formalised arrangements for cooperation

between the FIUs, including obligatory disclosure of data in investigations and prosecutions. It also encouraged the FIUs to "spontaneously" exchange data on suspicious financial transactions. There was no definition of what should constitute a "suspicious" transaction in the 1991 Directive, and none in last year's Decision.

In 1997 international consultants KPMG undertook a feasibility study on the possible creation of a "suspicious financial transactions" database at Europol. The "first steps" to "prepare the establishment of the database" were taken in 2000⁷². A recommendation in the 1998 'Vienna Plan' called for a system within Europol for the exchange of information and analysis on money laundering⁷³, but there has been no formal agreement. In fact, the 2000 EU Decision on FIU's dropped a stipulation in initial proposals that the exchange of data be channelled through Europol⁷⁴. Furthermore, the FIUs are to "take steps" to ensure that any data exchanged "is not accessible by any other authorities, agencies or departments"⁷⁵.

Europol is apparently creating its "suspicious transactions database" without a specific legal basis in the Convention or EU treaties or the formal support of FIUs. It can, of course, be argued that it does not need a legal basis – the database falls within its (extended) mandate to combat money laundering – but this means no specific rules on content, access or scrutiny. But what about the obligation on FIUs to protect their data? This will be at the member states' discretion, and in the UK the National Criminal Intelligence Service (NCIS) is home to both Financial Intelligence Unit and Europol National Unit. In its anti-terrorism action plan, the EU has called for an "extension of machinery for automatic information exchange between the FIUs"⁷⁶.

The EU has recently mandated Europol with investigations into counterfeiting of the new euro banknotes and coins. An "early warning system" based on counterfeit currency seized across the EU and a link to the European Central Bank will be built into the Europol computer system. A proposed Council Decision will require all member states to send counterfeited euros to Europol and inform them of any investigations⁷⁷. This has been presented to the media as Europol's "coming of age"⁷⁸ and Director Jurgen Storbeck has called for the agency to be granted "executive powers" for its investigations into fake euros⁷⁹.

6. PROBLEMS AT EUROPOL

"Europol must not be used for the passing of routine messages in respect of crime enquiries. This is one of the main purposes for which Interpol was established." – UK National Criminal Intelligence Service, January 1995⁸⁰.

Is Europol working?

In July a report by Dutch journalist Jelle Van Buuren produced confidential documents from the Dutch Central Investigative Agency (CRI) that cast doubt on the effectiveness of Europol⁸¹. Van Buuren suggests "Europol seems to be mostly an upgraded serving-hatch for vehicle registration plates and telephone numbers". Europol's annual reports confirm that the vast majority of requests they receive are for "investigative support data" (see page 3), more humbly described as: "names, phone numbers, car number plates etc."⁸²

According to the CRI, requests from Europol to the Dutch police were often poorly formulated. The CRI was "overwhelmed" with long lists of names in the context of human trafficking cases but was unable to discern whether they belonged to the suspected traffickers or the people smuggled in.

Europol's annual reports contain examples of ways in which it has fostered cooperation between the member states to produce 'high quality results'. The CRI says that many of these results could have been achieved "with or without the existence of Europol".

The CRI also reported that the two drugs analysis work files, "Cocophone" and "Courier", had failed because most national police forces, including the Dutch, refused to contribute their intelligence. Europol, however, blames the rules on AWFs, which it says are "too cumbersome to meet operational expectations"⁸³ and is pushing for greater legal obligation on member state police forces to supply them with data. In June, the Dutch ministry of justice organised a meeting between senior officials from the CRI and Europol with the aim of resolving the breakdown in cooperation. Belgian interior ministry officials have experienced similar problems, while simultaneously having to advance proposals to give Europol new powers as current president of the EU. The EP's current rapporteur on Europol, Maurizio Turco, also identifies a "reluctance of the national police forces to transmit their data to Europol"⁸⁴. No one wants to start talking about value for money.

Alleged corruption and stolen technology

On 30 May 2001, the Europol headquarters in The Hague were raided by a special Dutch police team following the arrest of a 41-year-old French official who worked in the technology services section⁸⁵. He was arrested for alleged fraud and forgery of documents and detained in custody after an earlier raid on his home and was thereafter held incommunicado.

His alleged offences apparently came to light during the audit of the budget and accounts for 1999. In April 2001, the President of the Europol Management Board set-up an internal investigation into the discrepancies in the accounts, headed by the Board's Irish representative Jimmy Martin. The findings were then taken to the Europol director Jurgen Storbeck who agreed the matter should be referred to the Dutch police⁸⁶.

The Dutch police are believed to have opened a second criminal enquiry, although no details have officially been released. It is said to concern allegations that Europol was using stolen technology from the Polygenesys corporation during the EC funded 'Sensus project' to develop language tools to allow police and intelligence services to communicate directly and to analyse foreign intercepts⁸⁷. Sensus bought together a consortium of technology specialists from law enforcement agencies, the private sector and academic research. The EC has funded two other projects on police technology in which Europol has participated.

The interior minister of Belgium, holder of the rotating EU presidency, said:

"It's unacceptable and inexplicable, and I don't want to hear an attempt at an excuse. We must enforce discipline with maximum severity. For unless there is public confidence, we cannot have a decent police force"⁸⁸.

7. THE EUROPOL NETWORK

Europol has direct links to the principal national criminal intelligence service of each member state (a Europol national unit is located in each). All law enforcement agencies - judicial, police, customs, intelligence and immigration - can or will be able to participate in investigations and operations based at Europol. It is also linked to several other planned and existing EU agencies and law enforcement networks.

"Eurojust": EU public prosecutions office

Following political commitment at the Tampere summit in 1999, EU justice ministers approved proposals to establish a European public prosecutions unit - "Eurojust" in December 2000. Final proposals are currently being negotiated⁸⁹. Although the EU contends Eurojust's location has not yet been decided and will be based on where it can "carry out its mandate to the best effect", agreement that it will work in The Hague alongside Europol is expected to be a formality.

The Eurojust unit will be comprised of a "prosecutor, magistrate or police officer of equivalent competence" appointed by each member state and supported by a permanent staff (the UK could, if it so wished, appoint a member of MI5). The offences it is competent to deal with are tied to the Europol Convention (as amended) and Eurojust will work alongside Europol officers in joint teams building prosecutions around ongoing investigations.

Eurojust will call on the services of the existing European Judicial Network, which already links mutual legal assistance units in the justice ministries of member states in order to expedite the administration of requests for police and judicial assistance between the EU member states⁹⁰.

Like Europol, Eurojust will also make non-binding requests for member states to set up a joint investigation team. It can also request national prosecution services to initiate criminal proceedings. If a member state refuses, it must provide Eurojust with reasons in writing. *Justice* suggests that this will mean requests "will undoubtedly be highly persuasive and difficult to decline in practice", giving a quasi-judicial role to the EU agencies in The Hague⁹¹. When any joint investigation team is set up in the framework of the MLA Convention, Eurojust must be informed.

Eurojust may receive all operational data on investigations into offences within its remit. National legislation will allow Eurojust officials to consult their national criminal records databases; access to the Schengen Information System is planned; and "judicial authorities and the Member States and Europol may exchange with Eurojust any information that is useful for carrying out its tasks".

UK parliamentary committees scrutinising the policy share the view that "during negotiations data protection issues appear to be left to the last minute and to produce unsatisfactory text". A Home Office (government)

memorandum on Eurojust explains that "the proposed management structure appears to lack accountability and transparency [and] there is also an associated outstanding discussion on the question of liabilities and immunities"⁹².

The proposals to establish the Eurojust office are still being negotiated, but as the EDU began Europol activities before the legislation had been agreed, a 'provisional judicial cooperation unit' was created in December 2000. According to officials, "pro-Eurojust" began operational work on 1 March 2001 and has since handled 170 cases⁹³. A recommendation by the European Parliament that 'pro-Eurojust' be bound by the 1981 Council of Europe Convention on data protection and supplementary Recommendation 87 (15) was ignored by EU governments⁹⁴. The agreement to create Eurojust proper is scheduled for adoption in December 2001.

EU Police & Intelligence Chief's Operational Task Forces

At the Tampere summit in 1999 EU governments also agreed on the creation of a European Police Chief's Operational Task Force. According to the UK delegation to the EU's Article 36 Committee (senior officials from the interior ministries of the member states):

"The idea was formulated after a gap was identified between the intelligence and information on serious organised crime (through Europol) and its translation into operational activity. It is envisaged that the European Police Chief's Operational Task Force will fill this gap"⁹⁵.

The task force covers all areas of police policy, although it is "geared essentially towards operational aspects" and "top priority" organised crime problems. It is comprised of "top-level" police officers, Europol and representatives of the European Commission. A "close link" to Eurojust is planned⁹⁶. The task force's relationship with the heads of the national Europol units (HENU's) is unclear, with the HENU's also concerned with operational activities.

Since being set-up early in 2000, the task force has met informally, twice a year in two-day conferences organised by each EU Presidency⁹⁷. Emergency meetings were convened after the demonstrations in Gothenburg, and then again following the terrorist attacks in the US on 11 September.

There are no rules of procedure, accountability or reference to data protection provisions. Initial documentation suggested that a formal EU agreement would give the police chiefs' task force a legal status, but no proposals have followed. Instead the matter will be left to the review of the Tampere recommendations in December 2001⁹⁸. The Council General Secretariat refused *Statewatch* access to the agenda of the task force's three-day meeting in October, saying that it was not an "EU" body! This decision is being appealed.

EU justice ministers have recently created a second operational task force of heads of national intelligence agencies⁹⁹.

Other EU databases

Proposals to allow Europol officers to access the Schengen Information System (Europe's biggest law enforcement database) and Customs Information System have been discussed since last year¹⁰⁰. Forthcoming feasibility studies are to examine the possible creation of an EU central casebook of investigations and prosecutions and a European criminal records office¹⁰¹.

More recently, as part of an EU anti-terrorist programme that expressly links counter-terrorism with combating illegal immigration, the German interior ministry proposed that Europol have access to the 'Eurodac' database, which will contain the fingerprints of every asylum-seeker and 'irregular' or illegal immigrant over the age of 14 who enters the EU¹⁰².

Interpol

Interpol was created in 1923 (as the International Criminal Police Congress) to enable police forces across the world to cooperate on specific investigations and 176 countries now participate.

Interpol currently has a wider competence than Europol, but this will change when current proposals are formally adopted. The major differences, and those that ensured Europol would have the primary role in EU police cooperation, are that Europol liaison officers in the member states are seconded to and work on behalf of Europol while Interpol liaison officers, designated by every participating state, are contact points in the Interpol network. Both have offices in the NCIS in the UK.

Informal agreement between the two agencies in 1998 gave Europol jurisdiction over cases in the EU and called for the establishment of similar technical rules and analytical techniques, the exchange of liaison officers, cooperation in operational analysis, and exchange of non-case related information¹⁰³. The recent cooperation agreement between the two agencies allows them to begin exchanging data.

Cybercrime network

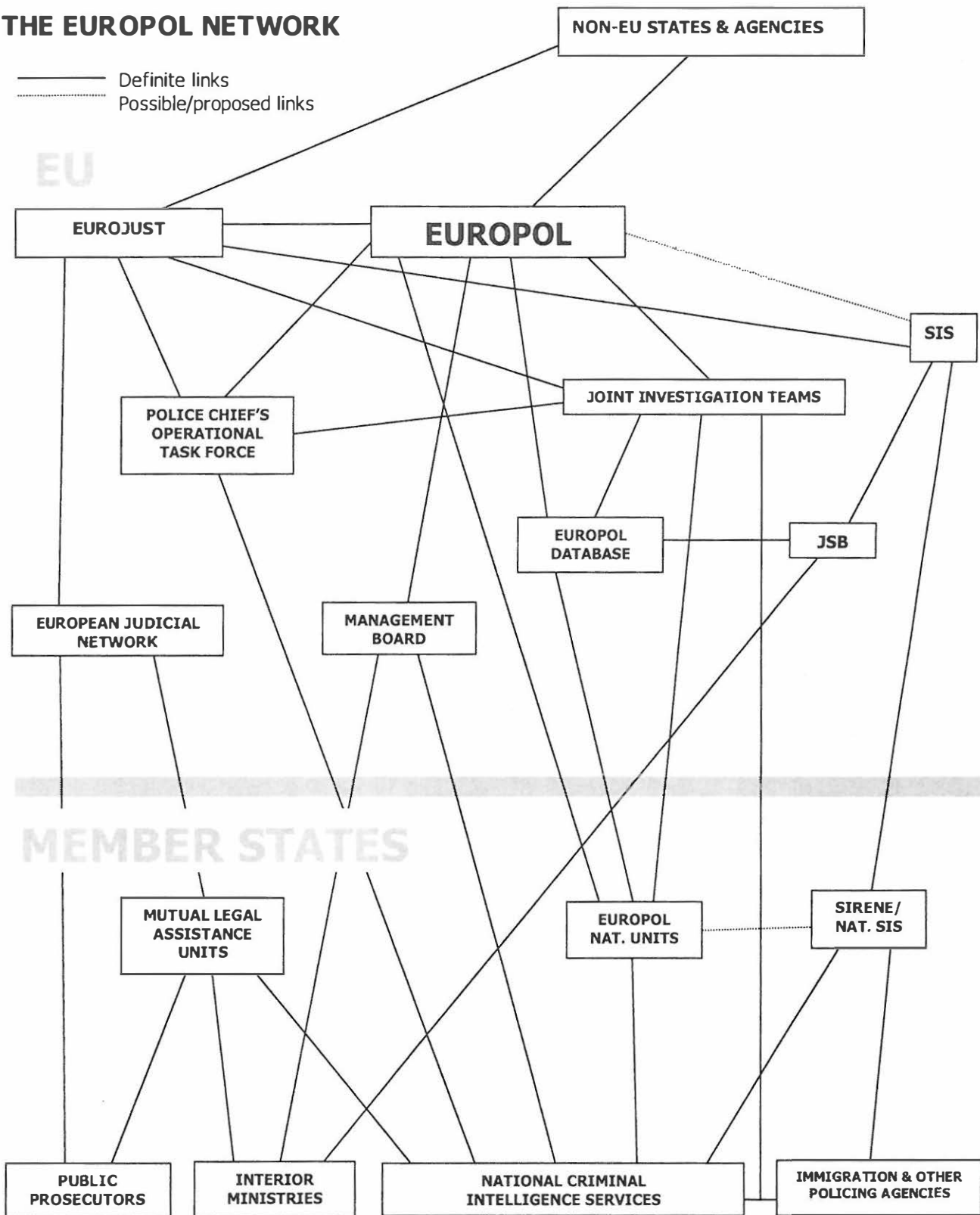
International cooperation to combat "cybercrime" has been developing over the last five years. The majority of initiatives have been drawn up outside the EU framework - by the Council of Europe (CoE) and G8 ministerial level committees, but the EU has recently proposed legislation¹⁰⁴. Europol is to be linked to a 24-hour cybercrime network which was created under a ministerial agreement at the G8 (USA, Canada, Italy, France, Germany, UK, Japan and Russia). EU states are to join the network later in the year, and Europol says it will join in 2002¹⁰⁵ (although proposals to add cybercrime to the Europol mandate have not yet been approved).

Crime prevention & police training

In May 2000 the EU agreed on the creation of a "Crime Prevention Network" made up of up to three contact persons in each member state (senior crime prevention officers, researchers and academics from each member state) and Europol. The network will focus on all aspects of crime prevention at the local, national and EU level, with particular attention to the fields of "juvenile, urban and drug-related crime". It will collect, centralise and analyse information on "crime prevention activities" and "criminality", "contribute to consideration of future national and European decisions", identify and develop areas for "research, training and evaluation" and organise "seminars, meetings and other activities". A handbook on "best practice in crime prevention" for EU police forces will also be produced¹⁰⁶.

The EU member states have also agreed on the creation of a European Police College. It has initially been set up as a network of national police training institutes with a view to the creation of a permanent institution in three years time (see *Statewatch* vol 11 no 1). It is mandated with organising training programmes for senior police officers and police trainers from the member states and accession candidate countries. The college can consider "on a case-by-case basis" the possibility of admitting officials from European institutions and other EU bodies. Europol is already involved in bilateral and multilateral training exercises with police officers from member states and applicant countries.

THE EUROPOL NETWORK



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"All of the legal and technical instruments set up in recent years in the domain of Justice and Home Affairs have one characteristic in common: each of them is in itself a paving stone on the one-way road towards the creation of a powerful common European public order and security apparatus, where traditional border lines between judiciary, customs, intelligence and military will disappear, where executive organs will play a leading role, and where national systems of checks and balances will no longer apply"

– Fortress Europe?, May 1998.

8. MANGEMENT, JUDICIAL CONTROL & ACCOUNTABILITY

Europol's directorate, currently comprised of Director Jurgen Storbeck and five deputies, is solely responsible for the day-to-day running of Europol. Storbeck's tenure is five years (from July 1999); future directorships will last for four years. The Director is responsible for hiring and dismissing the Europol staff, who "do not take orders from any government, authority, organization or person outside Europol"¹⁰⁷.

A Europol Management Board was created to oversee Europol and given 23 express powers, including the appointment of the Europol director and deputies, overseeing the development of the computer system, execution of the Europol budget and policy matters. It is comprised of one representative of each EU member state who gets a vote each when decisions are taken. These are interior ministry officials, who can be accompanied by "experts". European Commission representatives can attend as observers with the consent of the Board.

The Management Board must approve annual activity reports and work programmes, and the opening of analysis work files¹⁰⁸. Most decisions must be taken unanimously, but some, such as opening AWFs, only require a two-thirds majority. Composition and procedure of the Management Board is meant to guarantee national governments' 'control' of Europol.

Data protection

In the course of its intelligence activities Europol is able to process an exhaustive list of categories of personal data on individuals in a very broad range of circumstances. The agency was empowered to do so on the grounds that an adequate data protection regime was part of the Europol Convention. However, a number of commentators, including a Deputy Director of Europol, have suggested these data protection provisions are comprehensive in theory, but critically undermined by procedural weakness¹⁰⁹. One proposal to relax the data protection regime is already on the table and five of the proposed amendments to the Europol Convention could weaken it further.

A Joint Supervisory Body (JSB) was created to monitor Europol's adherence to the data protection rules. The JSB is comprised of representatives from data protection supervisory authorities in the member states and is entitled to access any documentation held by Europol. But, it has no powers of enforcement so it cannot order Europol to correct its files or ensure non-violation of the Convention; it can only "make any complaints it deems necessary to the Director"¹¹⁰.

Although the Convention guaranteed individuals the right to the correction and deletion of any personal data wrongly held by Europol, and the right to compensation where it is unlawfully used, it also severely restricted the right of access. Europol was given maximum discretion, with no indication of the circumstances, in which it must release information to an individual. If a person cannot find out what information Europol holds on them, then any guarantees of lawful processing and compensation are notional.

The JSB is entitled to give its opinion on data protection standards in third states and agencies with whom Europol wants to exchange data which the Council of the EU (the 15 governments) must take into account when authorising cooperation agreements. These reports only consider the legal standards with no examination of enforcement or practice (see page 5).

Rushed agreement will enable Europol to begin sharing personal data with agencies in the USA. A preliminary cooperation agreement, excluding the exchange of data is scheduled for mid-November, with full-agreement to follow on 6 December. The agreement's scope is not limited to terrorism and the JSB is expected to provide a positive opinion¹¹¹.

Judicial accountability

The protocol on Europol's privileges and immunities, agreed after the Convention, granted the agency an extensive immunity from the legal process - officers cannot be prosecuted and do not have to testify in court. Unlike most national police forces, no authority (independent or otherwise) exists to investigate complaints made against the agency. It is the Europol Director who is solely responsible for judging conduct, and only on that authority can the immunity from the legal process be waived¹¹².

Another protocol allowed some member states to opt-out of giving any jurisdiction to the European Court of Justice, either to hear individual cases or disputes between the member states. This despite the fact that the EU Treaty was supposed to guarantee the European courts competence to interpret any dispute regarding acts adopted under it¹¹³.

The issue of judicial accountability was highlighted last year after 58 Chinese people suffocated in the back of a lorry that had carried them illegally from the Netherlands to the UK. Following the disclosure that one of the

suspected traffickers had earlier been the subject of surveillance by the Dutch police, and was known to the British and French authorities, a member of the Dutch parliament asked whether the lorry had been the subject of a controlled delivery operation intended to prosecute the organisers, with the possible involvement of Europol¹¹⁴. The same question was raised by the defence in the Dutch trial, but the allegation was not substantiated and nothing more was heard about the matter. Leaving aside the 'what-ifs', the point is that while the Dutch and British police are accountable for their actions in court (at least on paper), Europol is only answerable where its Director waives immunity.

If, as Steve Peers suggests, "there is a serious risk that negligence by Europol staff will be shielded from any judicial scrutiny"¹¹⁵, an important question is whether the future joint investigation teams, involving national police officers based at Europol, could enjoy some of Europol's privileges and immunities by default.

Democratic accountability

Accountability to parliaments is minimal. The Convention entitles the European Parliament (EP) to a "special" annual report on Europol's activities - special in that it is a sanitized and less informative version of the actual Europol annual report¹¹⁶. The EP is not entitled receive any reports from the Joint Supervisory Body, Management Board or Audit Committee, or any EU Council discussions regarding disputes over Europol between the member states. National parliaments have no formal role whatsoever in any of these matters and few have actively concerned themselves with Europol's activities.

Europol has to submit its annual reports and work programmes for approval to the Council of the EU. Once submitted to the Council, the reports are classified as EU documents and are one of the few information sources available to the public. *Statewatch* has applied for these under the code of public access to EU documents every year and was consistently granted access (sometimes on appeal) until applications for the annual report for 2000 and the work programme for 2001 were both refused on the grounds of "public security" (although the 2002 work programme was released). Europol has suggested that the Convention be amended so that the Council must approve the work programme without the document actually being 'submitted'¹¹⁷.

This year the Swedish presidency acknowledged "murmurs of discontent" over the "democratic control" of Europol and suggested that wider "consultation" of the European Parliament (EP) on matters relating to Europol, observer status on the Europol Management Board and making Europol Directors give evidence before EP committees could be a step in the right direction. However, the Swedes took "no stand" on the "advisability" of any of the measures, from "neither a practical nor political point of view"¹¹⁸. Their successor, the Belgian Presidency, has suggested developing or adjusting "democratic, judicial and management forms of control", but has also declined to come up with any specific suggestions¹¹⁹. The European Commission has said it will table a proposal for an EU Council Decision on democratic control of Europol and joint investigation teams in the fourth quarter of 2001, but unlike the member states' fast-track proposal to implement the framework for joint teams, it has yet to be presented.

9. THE DECISION-MAKING PROCESS

Parliamentary democracy had a minimal role in the creation and development of Europol. Officials from EU interior ministries and senior police forces met in secret working parties to draw up the Convention, which was not published until after it had been agreed by justice and home affairs ministers. National parliaments had to ratify the agreement (and subsequent protocols) but could not amend the text in any way.

Decision-making on the Europol 'acquis' (see page 19) has been fractionally more transparent, but no less exclusive. Since the entry into force of the Amsterdam Treaty, proposals are published prior to their adoption, but are still negotiated in EU working parties (of interior ministry appointed officials) and then adopted (nodded through after agreement at 'senior officials' level) by the Council of Ministers. The European Parliament must be consulted on Decisions relating to Europol (with the exception of the budget) but the Council can ignore its recommendations and usually does. The rapporteur on recent Europol proposals for the EP's citizen's rights committee has called these consultations "useless" and said they suggest "a loss of time and money that could better be used for the decision-making of policies in which the EP is plainly competent"¹²⁰.

The Europol lobby

The Europol Management Board has a central role in the political process - drafting not just the rules to implement the Convention and the budget and work programmes, but more far-reaching proposals concerning

the extension of Europol's mandate and powers, cooperation agreements and external relations.

Europol always features in other EU police cooperation measures where they affect its remit, and there have also been attempts to give Europol a role in areas of law enforcement not envisaged in the Convention. Examples include several proposals to make Europol the central office for the exchange of DNA profiles and custodian of an eventual European DNA database¹²¹ and a cynical proposal to feed and crosscheck all information on voluntary repatriation cases through Europol to ensure that these schemes were not "exploited"¹²².

Some politicians are reluctant to give Europol new powers in the light of questions over effectiveness and democratic control, but individual concerns are apparently dwarfed by the collective will of EU interior ministries. As a member of the Dutch Parliament put it:

"Of course Europol should do its work in a proper way... But if other member states are willing to give Europol new powers, and if Europol itself says it can handle new tasks, it would be discouraging if the Dutch Parliament blocked this. We need a cross-border police in Europe"¹²³.

An evolving Europol Convention?

EU discussions on how to legislate for Europol's participation in joint investigation teams came to the reluctant conclusion that the Convention had to be amended after exploring several other avenues. Since any amendment requires the 15 national parliaments to ratify an agreement, the current Belgian presidency of the EU announced that the opportunity would be taken to "update" a "number of topics, allowing afterwards the Convention to remain unchanged for a number of years". However, just in case the Convention needs updating more regularly, it has been proposed that in future this should be done in a more "flexible" way: by a simple Decision in the Council¹²⁴.

Discussions on the possible amendments have proceeded on the basis of proposals from Europol's Management Board, from which the EU Europol Working Party is drafting a "shopping List, which shall be submitted to the Council in order to obtain a clear political mandate" (see page 21 for proposals). The European Parliament will not be consulted until the resulting protocol is drafted next year.

10. KEY ISSUES

The powers and activity of Europol are, like those of all law enforcement agencies, of critical importance to the civil liberty of individuals and the rights of suspects.

Interior ministry officials and their permanent representatives in the EU dominate a decision-making process in which parliaments and civil society are barely consulted.

It is clear that Europol has operated, since its creation as the EDU, 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.

The agency has extensive powers to collect and store information on individuals and categories of people but the data protection regime is inadequate to say the least and anyway cannot enforce of human rights and privacy laws.

Proposals to allow Europol officers to participate in joint police teams will give the agency operational powers that the public was told it would never have, and the agency will not be subject to a number of the regulatory mechanisms on policing usually found at the national level.

The extension of Europol's mandate to all crime, the joint teams framework 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 the activities of all law enforcement agencies, even those in their infancy, must be accountable.

Fostering international cooperation in organised crime investigations was the rationale behind Europol, but while it's 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.

Europol's activities may be influenced by both police practise and political pressure. While its 'effectiveness'

ultimately depends on the collaboration of national police agencies, the EU security agenda defines common priorities and provides political impetus for concerted international police cooperation. 'Illegal immigration

networks and non-European criminal groups (defined by ethnicity rather than association) were original Europol priorities; work on 'international' protests is being taken forward under the banner of terrorism; in response to events in the US on 11 September 2001 the existing project on "extremist Islamic terrorism in the EU" becomes a principal concern; and combating counterfeiting of the EU's new currency is also high on the agenda.

Appendix 1:

THE EUROPOL 'ACQUIS

Europol Convention and Protocols

- Europol Convention, *OJ C 316, 27.11.95.*
- Protocol on European Court of Justice, *OJ C 299, 9.10.96.*
- Protocol on privileges and immunities, *OJ C 221, 19.7.97.*
- Protocol amending Convention to extend mandate to all forms of money laundering regardless of the original offence, *OJ C 358, 13.12.00.*

Europol Drugs Unit

- Ministerial agreement creating EDU, 2.6.93, unpublished¹²⁵.
- Joint Action 95/73/JHA on the EDU, including extension of mandate (from drugs) to trafficking in radioactive/nuclear substances' illegal immigration and vehicle crime, *OJ L 62, 20.3.95.*
- Joint Action 96/748/JHA extending the EDU mandate to trafficking in human beings, *OJ L 342, 31.12.96.*

Rules, regulations and supplementary decisions on the Convention

- Rights and obligations of Europol liaison officers, *OJ C 26, 30.1.99.*
- Staff regulations, *OJ C 26, 30.1.99*(see also amendment in 2001 below).
- Rules on analysis files, *OJ C 26, 30.1.99.*
- Rules governing external relations with bodies linked to the EU, *OJ C 88, 1999.*
- Rules governing external relations with third states and bodies not linked to the EU, *OJ C 26, 30.1.99.*
- Rules on transmission of personal data to third states and bodies, *OJ C 88, 30.3.99* (see also proposed amendment in *OJ C 163, 6.6.01*).
- Rules on the receipt of information from third states and bodies, *OJ C 26, 30.1.99.*
- Rules on confidentiality of Europol data, *OJ C 26, 30.1.99.*
- Extension of Europol mandate to terrorism, *OJ C 26, 30.1.99.*
- Decision redefining trafficking in human beings to cover child pornography, *OJ C 26, 30.1.99.*
- Financial regulations, *OJ C 25, 30.1.99.*
- Decision extending mandate to forgery and means of payment, *OJ C 149, 28.5.99.*
- Decision authorizing Director to enter into negotiations with non-EU states and agencies, *OJ C 106, 13.4.00.*
- Recommendation on Europol's assistance to joint investigative teams, *OJ C 357, 13.12.00* (see also proposed protocol above).
- Amendment of staff regulations, *OJ C 112, 12.4.01.*
- Rules on Europol staff salaries and pension fund have also been agreed but are not included here.

Europol Management Board

- Rules of Procedure, *OJ C 26, 30.1.99.*

Joint Supervisory Body

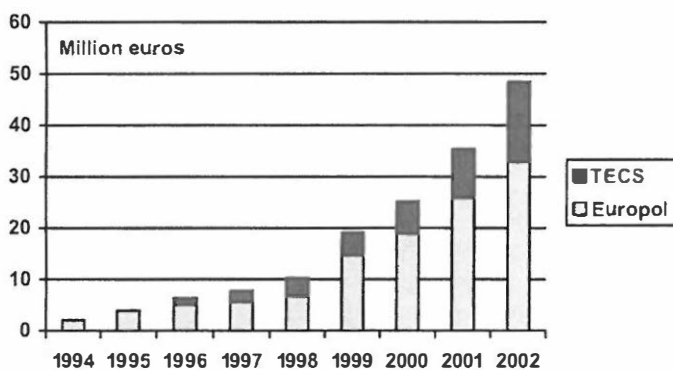
- Rules of procedure, *OJ C 149, 28.5.99.*

Appendix 2:

BUDGET & STAFF

The Europol budget has increased significantly every year. From an initial annual budget of just under 4 million euros (£2.4 million) in 1995 to the 48.5 million (£29.1 million) proposed for 2002. The last year-on-year increase was 37 per cent. EU member states pay for Europol in proportion to their gross national product (in the UK the contribution comes from the National Criminal Intelligence Service budget). In 1994, as host nation, the Netherlands spent an additional 14.5 million euros on refurbishing the Europol headquarters building in The Hague (it had previously housed the Netherlands National Criminal Intelligence Service). Another 450,000 euros followed in 2000. The Dutch also meet the annual costs of providing the HQ's security.

A proportion of the total annual Europol budget is allocated to the computer system and intelligence databases. The following chart shows the annual Europol operational budget¹²⁶:



Source: Europol annual budgets. Figures adjusted to account for overspends and carry-overs.

Staff

Europol is made up of a central office and staff that has increased from 18 when the EDU was created to 260 by the end of 2002. In addition, there are about 60 liaison officers seconded from and paid by the member states working at Europol and in the national units. The 260 posts detailed in the 2002 budget are split into the following departments:

| | |
|----|---|
| 12 | Directorate (The director, 5 deputies, and their assistants) |
| 6 | Central affairs |
| 4 | Planning and coordination |
| 3 | Public relations |
| 5 | Legal affairs |
| 12 | Operational and technical support |
| 62 | Intelligence and analysis |
| 64 | Organised crime (including 8 drugs specialists, 9 illegal immigration/trafficking in human beings, 2 stolen vehicles, 16 financial crime/forgery of money, 7 terrorism) |
| 56 | Technology services |
| 2 | Research |
| 36 | Resources and security |

Of 155 Europol liaison officers in 2000: 39 were Dutch, 24 British, 18 German, 16 French, 15 Italian, 13 Belgian, 6 Danish, 6 Spanish, 5 Portuguese, 4 Swedish, 3 Irish, 2 Austrian, 2 Finnish and one each from Luxembourg and Greece.

Appendix 3:

PROPOSED AMENDMENTS TO THE EUROPOL CONVENTION

The first draft "shopping list" of proposed amendments to the Europol Convention was produced by the Belgian EU presidency in July 2001. The following chart covers subsequent drafts and related documentation to the end of mid-November 2001. Although a final list of proposed amendments will be submitted to the Council "to obtain a clear political mandate" in December, the drafting of the text that will amend the Convention is well underway. The first three items on the list below have been declared "high priority".

| Proposal | Comment | Status | See page |
|---|---|--|----------|
| Europol's powers and remit | | | |
| Competence for all forms in Annex (deletion of article 2(2)) | Would add all the forms of crime mentioned in Annex 2 of the Convention to Europol's remit; agreed in principle by JHA Council on 27-28.9.01 | Proposed Council decision in 9093/5/01, 14.11.01 | 8 |
| Europol officers to participate in Joint investigation teams | Would create a new article (proposed as 3a) allowing Europol officers to liaise directly with national police in derogation from Article 4(2) of the Convention | Draft article in 12941/01, 9.10.01 | 6 |
| Europol to have power to request the member states to start investigations | Follows Tampere recommendation in 1999; would add to Europol's powers in Article 3(1) | Draft article in 12941/01, 9.10.01 | 7 |
| Objective of Europol widened from combating "organised" to "serious" crime | Proposed amendment to Article 2(1) that will effectively extend Europol's mandate and give it a wider competence than at present | Draft article in 12941/01, 9.10.01 | 9 |
| Europol to provide "support" to operations | Follows Council Recommendation of December 2000; requires amendment of Article 3(1)) | Draft article in 12941/01, 9.10.01 | 7 |
| "Clarification" of the legal obligation on member states to provide Europol | Stems from an apparent unwillingness on the part of some member state police forces to supply relevant intelligence data to Europol; the 'national security' exceptions to the 'obligation' are in Article 4(5) | Proposed amendment in 10979/01, 18.7.01 | 11 |
| Europol's role in counterfeiting of the euro | Europol has called for executive powers and jurisdiction over investigations into forged euros; nature of any amendment as yet unknown | Proposed amendment in 10979/01, 18.7.01 | 11 |
| Europol mandated with collecting intelligence on security and public order at EU Council meetings | The special JHA Council on security at summits following the demonstrations in Gothenburg called for Europol to be tasked with producing "joint analysis of violent disturbances, offences and groups" | Proposed amendment in 11282/1/01, 13.9.01 | 8 & 10 |
| Europol access to the Schengen Information System | First proposed in June 2000; may require a legal basis in the Europol Convention (and will require amendment of the Schengen provisions) | Proposed amendment in 10979/01, 18.7.01 | 13 |
| Letters rogatory to be transmitted through Europol | Letters rogatory are formal requests for police or legal cooperation that at present are made through diplomatic channels; will be one of Eurojust's tasks | Proposed amendment in 10979/01, 18.7.01 | 12 |
| Decision-making | | | |
| Convention to be amended by way of EU Council decision | Would replace existing procedure under Article 43(1) which requires ratification by national parliaments; EU Europol working party reports "most delegations" in favour | Draft article in 13284/01, 26.10.01 | 17 |
| Management Board to approve decisions on "some staff issues" instead of EU Council | Would add to the 23 specific matters that the Management Board already takes decisions on; could include decisions on staff salaries and pensions | Proposed amendment in 10979/01, 18.7.01 | 16 |

| | | | |
|---|---|--|----|
| Accountability | | | |
| Council to "approve" work programme rather than Europol to "submit" it to the Council | This amendment of Article 28(10) could reduce public accountability by removing Europol's annual report to the Council from the scope of the code on public access to EU documents | Proposed amendment in 10979/01, 18.7.01 | 17 |
| Public access to Europol documents | Europol has to draw-up a code on public access to its documents and wants to clarify the role of the Council and the effect on the Convention | Proposed amendment in 10979/01, 18.7.01 | 17 |
| Work programme to be presented to the EP "for information purposes only" | Would add marginally to the entitlement of the EP but the wording suggests that it would not be "consulted" or invited to scrutinise the document; would amend Article 34(1) | Proposed amendment in 10979/01, 18.7.01 | 17 |
| Five-year business plan to be transmitted to the Council | Europol has to draw-up a business plan under Article 35 of the Convention | Proposed amendment in 10979/01, 18.7.01 | |
| Data protection | | | |
| Relax data protection in transmission to third states | Proposed by the Swedish presidency in June | Proposed Council Act in OJ C 163, 6.6.01 | 5 |
| Relax rules on analysis work files | Europol describes them as "too cumbersome to meet operational expectations"; due for review in 2002 anyway | Proposed amendment in 10979/01, 18.7.01 | 11 |
| Widened access to the Europol Information System | Would extend access to the Europol database; at present only the Europol and the national units located into the criminal intelligence services of the member states have access | Proposed amendment in 10979/01, 18.7.01 | 4 |
| Remove or reduce time limit on storage of data in analysis work files | Discussions suggest considering "whether it is desirable to set a specific time limit for the storage of data" or whether the "system of review" under Article 21(3) is preferable | Proposed amendment in 10979/01, 18.7.01 | 4 |
| Formalise "leading member state concept" in rules on analysis work files provisions | This arrangement is already used in practise for some AWFs | Proposed amendment in 10979/01, 18.7.01 | 4 |
| Data protection rules applicable to "non-automated data" | German delegation suggests "clarification" is needed | Proposed amendment in 11282/1/01 ADD 1, 20.9.01 | |
| Confidentiality of Europol information | The Italian delegation has requested that the confidentiality rules could be made "more homogenous" | Proposed amendment in 11282/1/01 | |
| Judicial control | | | |
| Remove legal liability where Europol transmits inaccurate data that was supplied a third country | Under the Article 15(1) of the Convention Europol is responsible for any inaccurate data that it transmits and is concerned that it could be sued if it passes on false information it receives from a non-EU state or agency | Proposed amendment in 10979/01, 18.7.01 | 5 |
| Democratic, judicial and management forms of control | Should be examined "in view of recent events" according to Belgian presidency | Proposed amendment in 11840/01, 13.9.01 | 12 |
| Evaluate Europol's immunities, the role and position of judicial authorities in relation to Europol, and the role of the Court of Justice | Three proposals from the German delegation; substance unclear | Proposed amendments in 11282/1/01 ADD 1, 20.9.01 | 12 |
| External relations | | | |
| Cooperation with Eurojust | Under the draft Eurojust decision the Council must adopt a cooperation agreement but the Europol Management Board wants to conclude its own | Proposed amendment in 10979/01, 18.7.01 | 16 |

| | | | |
|--|--|---|----|
| | agreement under the rules on external relations | | |
| Forum for discussion with third-states and agencies with whom Europol has concluded agreements | | Proposed amendment in 10979/01, 18.7.01 | 5 |
| Europol to cooperate with regional crime initiatives | Europol is currently unable to enter into cooperation agreement with organisations or initiatives that have no legal basis and would like to be able to cooperate on the basis of Memorandum of Understanding (MoUs) | Proposed amendment in 10979/01, 18.7.01 | |
| Organisational matters | | | |
| Remove obligation on Europol to use services of EU translation centre | Europol says it would save money if this obligation under Article 33 of the Convention was removed | Proposed amendment in 10979/01, 18.7.01 | |
| Strengthen position of Europol Heads of National Units (HENUs) | Would strengthen the "internal position" of HENUs by allowing them to be present at Management Board meetings (but without a vote); would amend Article 4(7), possibly specifying that the HENU's focus on operational matters | Proposed amendment in 10979/01, 18.7.01 | |
| HENUs to become an organ of Europol | Would expand the "formal advisory role" of the HENUs | Proposed amendment in 10979/01, 18.7.01 | |
| Bring forward deadline for submitting the annual accounts | Appears to follow the discovery of alleged criminal conduct by a Europol officer during an audit of Europol's accounts; would shorten the 16 month audit process under Article 36 which is described as "a waste of time" | Proposed amendment in 10979/01, 18.7.01 | 12 |
| "Technical errors and procedural questions" | According to Belgian Presidency language errors in the original Convention could be "cleaned-up" and procedural questions relating to implementing provisions examined | Proposed amendment in 11282/1/01, 31.7.01 | |

Appendix 4:

DEFINITION OF OFFENCES IN EUROPOL REMIT

Current mandate

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 (Article 5, Europol Convention, OJ C 316, 27.11.95).

crime connected with nuclear and radioactive substances means the criminal offences listed in Article 7(I) 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 (Annex 2, Europol Convention, OJ C 316, 27.11.95).

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 (Annex 2, Europol Convention, OJ C 316, 27.11.95).

traffic in human beings means subjection of a person to the real and illegal sway of other persons by using violence or menaces or by abuse of authority or intrigue with a view to the exploitation of prostitution, forms of sexual exploitation and assault of minors or trade in abandoned children (Annex 2, Europol Convention, OJ C 316, 27.11.95).

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 (Annex 2, Europol Convention, OJ C 316, 27.11.95).

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 (Annex 2, Europol Convention, OJ C 316, 27.11.95).

traffic in human beings means subjection of a person to the real and illegal sway of other persons by using violence or menaces or by abuse of authority or intrigue, especially with a view to the exploitation of prostitution, forms of sexual exploitation and assault of minors or trade in abandoned children. These forms of exploitation also include the production, sale or distribution of child-pornography material (Council Decision of 3 December 1998 supplementing the definition of the form of crime 'traffic in human beings' in the Annex to the Europol Convention, OJ C 1999 26/05).

forgery of money and **forgery of means of payment** shall mean the acts defined in Article 3 of the Geneva Convention of 20 April 1929 on the Suppression of Counterfeiting Currency [1. Any fraudulent making or altering of currency, whatever means are employed; 2. The fraudulent uttering of counterfeit currency; 3. The introduction into a country of or the receiving or obtaining of counterfeit currency with a view to uttering the same and with knowledge that it is counterfeit; 4. Attempts to commit, and any intentional participation in, the foregoing acts; 5. The fraudulent making, receiving or obtaining of instruments or other articles peculiarly adapted for the counterfeiting or altering of currency (Article 3)], which applies to both cash and other means of payment. (Council Decision of 29 April 1999 extending Europol's mandate to deal with forgery of money and means of payment, OJ C 1999 149/16). Article 2 of this Decision of 29 April 1999 extending Europol's mandate to deal with forgery of money and means of payment is amended in order to cover the acts defined in Articles 3, 4 and 5 of the Framework Decision of 29 May 2000 on increasing protection by criminal penalties and other sanctions against counterfeiting in connection with the introduction of the euro (9914/01, 19.6.01)

Proposed mandate

terrorist offences include the [intentional] acts listed below, as defined under national law, where unlawfully committed with the aim of seriously affecting, in particular by intimidation of the population, or destroying the political, economic or social structures of a country or an institution governed by public international law... (a) Murder (b) Bodily injuries (c) Kidnapping or hostage taking (d) Extortion (e) Theft or robbery (f) Unlawful seizure of or damage to state or government facilities, means of public transport, infrastructure facilities, places of public use, and property (g) Fabrication, possession, acquisition, transport or supply of weapons or explosives (h) Releasing contaminating substances, or causing fires, explosions or floods, endangering people, property, animals or the environment (i) Interfering with or disrupting the supply of water, power or other fundamental resource (j) Attacks through interference with an information system (k) Threatening to commit any of the offences listed above (l) Directing a terrorist group (m) Promoting of, supporting of or participation in a terrorist group... instigating, aiding, abetting or attempting to commit a terrorist offence" (proposed definition in 12671/01, 18.11.01, [] in original)

cybercrime shall be taken to mean all forms of attack on automated data-processing systems (proposal in 12224/00, 1210.00).

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 (proposal in 6876/01, 8.3.01).

illicit trade in human organs and tissue means unlawful trade in or unlawful transfer of human organs and tissue (proposal in 6876/01, 8.3.01).

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 practice extortion (proposal in 6876/01, 8.3.01).

illegal restraint means confinement or other unlawful deprivation of liberty of a person (proposal in 6876/01, 8.3.01).

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 (proposal in 6876/01, 8.3.01).

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 behaviour 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 (proposal in 6876/01, 8.3.01).

organised robbery means theft by means of violence or by threat implying or appearing to the threatened person to imply an imminent danger (proposal in 6876/01, 8.3.01).

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 (proposal in 6876/01, 8.3.01).

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 (proposal in 6876/01, 8.3.01).

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 (proposal in 6876/01, 8.3.01).

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 (proposal in 6876/01, 8.3.01).

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 (proposal in 6876/01, 8.3.01).

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 (proposal in 6876/01, 8.3.01).

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 (proposal in 6876/01, 8.3.01).

forgery of administrative documents and trafficking therein means the act of counterfeiting administrative documents and the transfer, selling or buying of them (proposal in 6876/01, 8.3.01).

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 (proposal in 6876/01, 8.3.01).

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 (proposal in 6876/01, 8.3.01).

illicit trafficking in arms, ammunition and explosives means unlawful trade in or unlawful transfer of arms, ammunition or explosives (proposal in 6876/01, 8.3.01).

illicit trafficking in endangered animal species means unlawful trade in or unlawful transfer of endangered animal species (proposal in 6876/01, 8.3.01).

illicit trafficking in endangered plant species and varieties means unlawful trade in or unlawful transfer of endangered plant species and varieties (proposal in 6876/01, 8.3.01).

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 of air, soil, water, animals or plants (proposal in 6876/01, 8.3.01).

illicit trafficking in hormonal substances and other growth promoters means unlawful trade in or unlawful transfer of hormonal substances and other growth promoters (proposal in 6876/01, 8.3.01).

Notes

¹ Resolution on football hooliganism, OJ C 193; Joint Action on law and order and security 97/339/JHA, OJ L 147, 1997; G8 network of contact points for combating high-tech crime - Draft Council Recommendation, 7273/01, 22.3.01.

² Figures from EDU/Europol annual reports. The EDU annual report for 1996 (6711/97, 19.3.97) describes the three categories as follows: *investigative support* - "intelligence... names, phone numbers, car number plates"; *special expertise* - "drug precursors, ethnic criminal groups, legal/technical/tactical expertise ..."; *operational support* - "special law enforcement operations: controlled deliveries, surveillance etc".

³ The Europol activity reports for 1999 and 2000 provide different figures.

⁴ NCIS was established in 1992 and incorporated regional criminal intelligence offices, the national drugs intelligence unit and specialist units from the Metropolitan Police with a national remit.

⁵ These analysis files are referred to in various Europol documents: agendas and minutes of the Council of the European Union Europol working party, Europol work programmes and annual reports.

⁶ 11175/01, 23.7.01.

⁷ The rules applicable to analysis files were agreed in May 1997 and formally adopted in November 1998, OJ C 26, 30.1.99. For an analysis of these rules see Thomas Mathiesen, On Globalisation of Control: Towards an integrated Surveillance System in Europe, *Statewatch*, 1999 and *Statewatch* vol 8 no 5 (September-October 1998).

⁸ 10979/01, 18.7.01.

⁹ 10979/01, 18.7.01.

¹⁰ *Bürgerrechte & Polizei / CILIP* 61 no. 3, 1998, pages 52-53.

¹¹ Article 10(4), Europol Convention, OJ C 316, 27.11.95.

¹² Cooperation agreements between Europol and Interpol, Iceland and Norway were approved at the EU Justice and Home Affairs Council on 28-29 May 2001 (see respectively 9011/01, 9012/01 and 9013/01, 18.5.01). The EU Culture/Audiovisual Council on 5 November 2001 approved, without debate, the conclusion of cooperation agreements with Poland, Hungary, Estonia and Slovenia.

¹³ 3296/6/01, 20.9.01.

¹⁴ Rules on transmission of personal data by Europol to third states and third bodies, OJ C 88, 30.3.99 (see *Statewatch* vol 7 no 6 (November-December 1997) and vol 8 no 5 (September-October 1998)).

¹⁵ Swedish proposal to amend the rules on transmission of personal data by Europol, OJ C 163, 6.6.01. For discussions between the Europol Management Board and Joint Supervisory Body on this proposal see 8785/01 ADD 1, 21.5.01.

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- ¹⁶ Article 1(b), Europol cooperation agreements, see note 12.
- ¹⁷ See evidence in House of Lords Select Committee on the European Communities, Report on Europol, 25.95.
- ¹⁸ Page 23, On Globalisation of Control: Towards an integrated Surveillance System in Europe, Thomas Mathiesen, *Statewatch*, 1999.
- ¹⁹ Article 4, adopted cooperation agreement, see note 12.
- ²⁰ House of Lords Select Committee on the European Communities, Report on Europol, 25.95, p.57.
- ²¹ Europol Drugs Unit Work Programme 1996, 11640/95, 15.11.95.
- ²² Article 72, Schengen Implementing Convention (now incorporated into the EU legal framework). Article 12 of the 2000 EU Mutual Legal Assistance Convention also provides for controlled deliveries, OJ C 197, 12.7.00.
- ²³ EU Manual on controlled deliveries, 18.6.98, Europol/EDU file no. 2571-14r4 (confidential).
- ²⁴ Joint Action 95/73/JHA concerning the EDU, OJ L 62, 20.3.95.
- ²⁵ 10979/01, 19.7.01.
- ²⁶ EU Mutual Legal Assistance Convention, OJ C 197, 12.7.00.
- ²⁷ Statewatch evidence to House of Lords Select Committee on the European Communities report on MLA Convention, 14.2.00.
- ²⁸ Article 13, EU Mutual Legal Assistance Convention OJ C 197, 12.7.00.
- ²⁹ Recommendation 43, Tampere European Council Conclusions (15-16 October 1999).
- ³⁰ Recommendation on Europol's assistance to joint investigation teams, OJ C 357, 13.12.00.
- ³¹ Article 1(2), proposed Protocol amending Article 2 of the Europol Convention in 6876/01, 8.3.01.
- ³² Europol work programme for 2002 refers to the development of "guidelines", 8141/01, 24.4.01.
- ³³ 11990/01, 19.9.01.
- ³⁴ 11990/01 ADD 1, 16.11.01.
- ³⁵ 8141/01, 24.4.01.
- ³⁶ 5845/00, 8.2.00.
- ³⁷ Joint Action extending the EDU's mandate, OJ L 142, 31.12.96.
- ³⁸ Decision extending Europol's mandate to counter-terrorism, OJ C 26, 1999.
- ³⁹ Extension of Europol's mandate to forgery and means of payment, OJ C 149, 28.5.99.
- ⁴⁰ Protocol amending Article 2 and the Annex of the Europol Convention, OJ C 358, 13.12.00.
- ⁴¹ In 1999 the definition of trafficking in human beings was widened to cover child pornography offences, OJ C 26, 30.1.99.
- ⁴² 12224/00, 12.10.00.
- ⁴³ Draft Council Decision extending Europol's competencies to all the forms of crime mentioned in the Annex of the Europol Convention, 9093/4/01, 20.9.01. According to JHA Council conclusions of 20.9.01 there is already general agreement among the EU delegations on this proposal.
- ⁴⁴ Conclusions adopted by the Council and the representatives of the Member States on 13 July 2001 on security at meetings of the European Council and other comparable events, 10916/01, 16.7.01. See also list of possible amendments to the Europol Convention, 11282/1/01, 13.9.01.
- ⁴⁵ Article 1 of the EU Joint Action on participation in a criminal organisation defines a criminal organisation as "a structured association, established over a period of time, acting in concert with a *view to committing* offences which are punishable by a deprivation of a *maximum* of at least four years" (OJ L 351, 29.12.98).
- ⁴⁶ 12941/01, 9.10.01.
- ⁴⁷ EU Manual on controlled deliveries, 18.6.98, Europol/EDU file no. 2571-14r4 (confidential).
- ⁴⁸ Jelle van Buuren, *Telepolis*, 2.7.01,
<http://www.heise.de/tp/english/html/result.xhtml?url=/tp/english/inhalt/te/3615/1.html&words=Europol>
- ⁴⁹ 11175/01, 23.7.01.
- ⁵⁰ 5571/01, 26.1.01.
- ⁵¹ 8141/01, 24.4.01.
- ⁵² For definitions of "organised crime" used to compile the Europol/EU' situation report see *Statewatch* vol 7 no 1 and *Statewatch European Monitor* vol 3 no 1.
- ⁵³ Steve Peers, EU Justice and Home Affairs Law, 2000, Longman (p216).
- ⁵⁴ Joint Action on profiling of drugs, OJ L 322/5, 12.12.96.
- ⁵⁵ The EU JHA Council of 28-29 May adopted a Swedish initiative "establishing a system of special forensic profiling analysis of synthetic drugs" including a standard form for sending drugs samples between the member states (8942/01, 23.5.01). At the same Council there was political agreement on the need to found common laboratories and further legislation is to be drawn up. The initial Swedish proposal stipulated that member states should send "the related criminal intelligence or investigative data to Europol" (14007/00, 11.12.00).
- ⁵⁶ Europol's collection model aims to harmonise law enforcement statistics on drugs across the EU and covers general information (including characteristics of the place of seizure, reporting authority, detection method and use of any technical means), the type of seizure (type of substance or precursor, appearance, amount, purity, price), "personal possession and/or consumption" (age, sex, nationality, country of residence, profession), trafficking (methods etc.), cultivation, manufacture and details on the person involved.
- ⁵⁷ Unreleased Europol annual report 2000, Europol File no. 1423-25, 6.2.01.
- ⁵⁸ 8141/01, 24.4.01.
- ⁵⁹ *The Irish Times*, 16.3.01.
- ⁶⁰ 5496/01, 19.1.01 (see *Statewatch European Monitor* vol 3 no 1, 2001).
- ⁶¹ See EU press release from JHA Council, 28-29 May 2001.

⁶² COM (2001) 672 final, 15.11.2001.

⁶³ Europol annual report 2000, see note 57 above.

⁶⁴ The EU's anti-terrorism "road-map" calls for a proscribed list of terrorist organisations by Europol and the terrorism specialists in the member states, 13880/01, 15.11.01. For emergency financial regulations and UK, US and EC lists see: <http://www.statewatch.org/observatory2d.htm>.

⁶⁵ All EU member states have ratified the 1977 Council of Europe on the Suppression of Terrorism, which does refer to specific offences. For the recent UK definitions, which mirrored that of the FBI, see the UK Terrorism Act 2000.

⁶⁶ Terrorism is proposed as offences "which are intentionally committed by an individual or a group against one or more countries, their institutions or people with the aim of intimidating them and seriously altering or destroying the political, economic or social structures of those countries", Commission doc. COM (2001) 521, 19.9.01). See coverage on *Statewatch News Online*: <http://www.statewatch.org/news/2001/oct/03finance.htm>

⁶⁷ *El País*, 18.2.01.

⁶⁸ For more information on Buro Jansen & Janssen see: <http://www.burojansen.nl>

⁶⁹ *Süddeutsche Zeitung*, 26.8.01.

⁷⁰ *Statewatch*, Sept/Oct 2001, vol 11 no 5. See 11282/1/01, 13.9.01 for proposed amendment to Europol Convention.

⁷¹ Directive 91/308/EC, OJ L 166, 1991.

⁷² Europol annual report 2000, see note 57 above.

⁷³ Paragraph 48a.2, Action Plan of the Council and Commission on how best to implement the provisions of the Amsterdam Treaty establishing an area of freedom, security and justice, 13844/98, 4.12.98.

⁷⁴ 11636/99, 25.10.99.

⁷⁵ Article 5(4)), Decision 2000/642 on FIUs, OJ L 271, 24.10.00.

⁷⁶ 13880/01, 15.11.01.

⁷⁷ 14395/00, 22.12.00.

⁷⁸ "Europol comes of age in battle with the euro-forgers", Ian Black, *Guardian*, 8.6.01.

⁷⁹ *Süddeutsche Zeitung*, 26.8.01.

⁸⁰ House of Lords Select Committee on the European Communities, Report on Europol, 25.95, p.45.

⁸¹ Jelle van Buuren, *Telepolis*, 2.7.01 (see note 48 above for URL).

⁸² 1996 EDU annual report (see note 2 above).

⁸³ 10979/01, 18.7.01.

⁸⁴ Maurizio Turco MEP, rapporteur on Europol for the EP Citizens' Freedoms and Rights, Justice and Home Affairs. From a forthcoming article for *Parliament Magazine*, released by Mr. Turco in November 2001.

⁸⁵ See *Statewatch News Online*, June 2001: <http://www.statewatch.org/news/2001/jun/03europol.htm>

⁸⁶ See *Daily Telegraph*, 2.6.01 and 21.7.01.

⁸⁷ Jelle van Buuren, *Telepolis*, 2.7.01 (see note 48 above for URL).

⁸⁸ *Daily Telegraph*, 21.7.01.

⁸⁹ For an analysis of the initial Eurojust proposals see *Statewatch* vol 10 no 3/4 (June/August 2000).

⁹⁰ Joint Action establishing a European Judicial Network, OJ L 191, 7.7.98.

⁹¹ EU Cooperation in criminal matters: response to specific proposals, *Justice*, February 2001.

⁹² Home Office Explanatory Memorandum on Justice and Home Affairs matters, "Draft Council Decision setting up Eurojust, 18.4.01; House of Commons Select Committee on European Scrutiny, Thirteenth Report of 2001, European Judicial Cooperation Unit (EUROJUST), 28.4.01.

⁹³ *Euobserver.com*, 20.11.01, http://euobserver.com/front_print.phtml?article_id=4221.

⁹⁴ Gebhardt Report for European Parliament committee, (AS-0317/2000).

⁹⁵ 5858/00, 2.2.00 (see *Statewatch European Monitor* vol 2 no 1, 2000).

⁹⁶ 8120/00, 3.5.00.

⁹⁷ 7753/00, 12.4.00; 11031/00, 3.10.00; 7194/01, 15.3.01.

⁹⁸ 11031/00, 3.10.00.

⁹⁹ 3926/6/01, 20.9.01.

¹⁰⁰ An action plan to tackle organised crime endorsed by EU justice ministers in 2000 recommended that Europol should have access to SIS data by 31 December 2001, but this now seems impossible. Europol themselves seem to think they may get access during 2002. The same action plan called for a review of the conditions under which Europol could access the CIS (Action plan on organised crime, 6611/00, 21.6.00). More recent discussions point to an "amendment to the Europol Convention in order to create an appropriate legal basis, notwithstanding the amendments to the Schengen Convention, which may be necessary" (10979/01, 18.7.01). The proposal has also featured in discussions on the EU anti-terrorism proposal.

¹⁰¹ See recommendations 4 and 12 of the "Programme of measures to implement the principle of mutual recognition in criminal matters", 13750/1/00, 24.11.00.

¹⁰² SN 4038/01, 27.9.01.

¹⁰³ 7879/98, 28.4.98.

¹⁰⁴ A widely criticised CoE Convention on "cybercrime" will give law enforcement agencies sweeping new powers to investigate computer related crime (effectively defined as any offence involving a computer). Complementary G8 discussions have proposed that all communications data should be warehoused for law enforcement purposes - for at least seven years. At present it must be destroyed by service providers once they have used for billing purposes, but the EU has just proposed that this proviso - the result of international data protection laws - should be scrapped, and law enforcement agencies given access (see *Statewatch* website, May 2001, <http://www.statewatch.org/soseurope.html>).

¹⁰⁵ 7273/01, 22.3.01.

¹⁰⁶ Decision 2001/427 on Crime Prevention Network, OJ L 150, 2001.

¹⁰⁷ Article 30(1), Europol Convention.

¹⁰⁸ Article 28, Europol Convention.

¹⁰⁹ Deputy director of Europol, W Bruggeman, has said "the provisions on data protection are comprehensive in theory, but fatally undermined by the difficulty that is likely to arise in enforcing them. Within the Union, the system will depend crucially on the degree of respect for data protection and individual rights imbued in every police officer involved. This will require not only rigorous training but in many cases a radical change in the culture of the national force concerned...", Thomas Mathiesen, *On Globalisation of Control: Towards an integrated Surveillance System in Europe*, Statewatch, 1999 (p.23). See also Steve Peers, *EU Justice and Home Affairs Law*, 2000, Longman (p216) and House of Lords Select Committee on the European Communities, *Report on Europol*, 25.95.

¹¹⁰ Article 24(5), Europol Convention.

¹¹¹ 13880/01, 15.11.01.

¹¹² OJ C 221, 19.7.97.

¹¹³ OJ L 299, 9.10.96. When the protocol was signed Belgium, Germany, Greece, Italy, Luxembourg, the Netherlands, Austria, Portugal and Finland opted to allow any full recourse to the ECJ, with France and Ireland opting to allow references only from their highest Courts. Sweden, Denmark and Spain made declarations when adopting the protocol.

¹¹⁴ *Statewatch*, March/April 2001, vol 11 no 2.

¹¹⁵ Steve Peers, *EU Justice and Home Affairs Law*, 2000, Longman (p218).

¹¹⁶ On the differences between these two reports see "Where now for accountability in the EU?" on Statewatch News Online, March 2001: <http://www.statewatch.org/soseurope.html>.

¹¹⁷ According to article 28(10) of the Europol Convention, the work programme shall be 'submitted' to the Council. In discussions on amending the Europol Convention, Europol suggest "In order to define the role of the Council in this respect, it could be stated in the Convention that the Work Programme, after having been unanimously adopted by the Management Board, should be *approved* by the Council" (emphasis in original). See 10979/01, 18.7.01.

¹¹⁸ 8677/01, 14.5.01.

¹¹⁹ 11282/1/01, 13.9.01.

¹²⁰ Maurizio Turco MEP, see note 84 above.

¹²¹ An EU Resolution on the exchange of DNA analysis results was adopted in 1997 (OJ C 193, 24.6.97). It called for the standardisation of profiling techniques, the creation of national databases in each member state and the eventual creation of a European DNA database. "An appropriate role for Europol" was to be "considered". This resolution was followed-up in October 1999 by proposals to expedite the exchange of DNA analysis results and adopt a standard set of DNA "markers" in order to harmonise profiling techniques. The first draft of the Resolution suggested that "the placing of a server at Europol for sharing data between the member states in the future should be considered, to the extent that such data relates to types of crime falling within Europol's sphere of competence" (see 8937/00, 29.5.00). Subsequent drafts introduced a footnote stating that any server would "only permit exchanges between the member states, excluding any centralisation of data" (8937/2/00, 16.11.00). The adopted Resolution (28/29 May 2001 JHA Council, see 7299/1/01, 11.5.01) contained no reference to Europol. See *Statewatch* vol 8 no 5 (September/October 1998), vol 10 no 1 (January/February 2000), vol 10 no 5 (October/November 2000), vol 11 no 1 (January/February 2000).

¹²² A draft recommendation called on the member states to set up schemes and encourage voluntary repatriation, and consult each other to prevent "successive entitlements". It suggested "that a system for exchanging information, centralised in the EDU-Europol, should be set up" and member states should check out returnees "systematically by means of prior consultation via national units of the [Europol] network" (6283/00, 18.2.00). Later drafts dropped any recommendation to involve Europol in voluntary return - a blatant and cynical excuse for housing yet more data on migrants - and the recommendation was eventually shelved by the French presidency because of difficulties over the EU legal basis (for subsequent drafts see 6283/1/00, 22.3.00 and 6283/2/00, 10.4.00).

¹²³ Gerrit Jan van Oven MP (Labour), from Jelle van Buuren, *Telepolis*, 2.7.01 (see note 48 above).

¹²⁴ 13284/01, 26.9.01.

¹²⁵ The ministerial agreement creating the EDU was published in "Key Texts on Justice and Home Affairs in the European Union, Volume 1" by *Statewatch* in 1997.



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- * Tampere (& follow up)
- * Policing & Europol
- * Judicial cooperation
- * Schengen cooperation

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