

**SEMDOC**

Statewatch European Documentation &  
Monitoring Centre on justice and home  
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PO Box 1516, London, N16 0EW, UK  
tel: 0181 802 1882 (00 44 181 802 1882)  
fax: 0181 880 1727 (00 44 181 880 1727)

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RESTREINT

EUROPOL 95

**NOTE**

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from : General Secretariat of the Council

dated: 14 September 1994

to : the K4 Committee

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Subject: Major outstanding problems regarding the draft Convention on the establishment  
of Europol

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**I. INTRODUCTION**

- (a) The Working Group Europol met on 4 to 8 July, 25 to 29 July and  
5 to 9 September 1994 to discuss the draft Convention on the establishment  
of Europol.

A first draft document, 8074/94 EUROPOL 64 was presented and discussed in July.  
A revised draft was discussed at the meeting of the Group from 5 to  
9 September 1994 (8074/1/94 EUROPOL 64 REV 1). A new text, taking into  
account the results of the previous meetings will be studied by the Group at its  
meeting of next week.

At their informal meeting in Berlin on 7 September 1994 the objective of Europol, the role of the European Court of Justice, the Court of Auditors and parliamentary control were debated. Steering Group II, at its meeting of 12 and 13 September in Hamburg discussed issues referred to in doc. 9042/94 EUROPOL 93.

- (b) The Presidency considers that important substantial progress has been made and submits to the Committee the following items that were all debated at the aforementioned meeting of Steering Committee II. (1)

## II. MAJOR ITEMS

### (a) Objectives (Article 2)

#### 1. Article 2, paragraph 1

All delegations agreed to the following text:

#### Article 2 Objectives

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

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(1) The work of Steering Committee II on the role of liaison officers is in 9319/94 EUROPOL 114.

2. Article 2 paragraph 2

All Delegations, except the Spanish Delegation, agreed on the following text of Article 2, paragraph 2:

- 2. *In order to achieve progressively the objective mentioned in paragraph 1, Europol shall initially act to prevent and combat unlawful drug trafficking, crime in relation to nuclear and radioactive substances, immigrant smuggling, motorvehicle crime (in particular trafficking to other States and theft of goods in transit) and illegal money-laundering activities in connection with these forms of crime. Under the procedure laid down in Article VI of the Treaty on European Union, the Council may unanimously decide to instruct Europol to deal with other forms of crime listed in the Annex to this Convention or specific manifestations thereof. Before taking this decision, the Council shall instruct the Management Board to prepare its decision and in particular to set out the budgetary and staffing implications for Europol.*

- Revised Annex (List of other forms of crime referred to in Article 2(2))

1. terrorism
2. other serious forms of international crime:
  - (a) against life, freedom from bodily harm and personal freedom
    - homicide
    - grievous bodily injury
    - kidnapping and hostage-taking
    - unlawful trade in organs
    - exploitation of prostitution
  - (b) against the State
    - illegal trafficking in arms, ammunition and explosives
    - illegal transfers of technology
    - traffic in human beings
    - unlawful supply of labour

- *forgery of official documents*
- *environmental crime*
- *illegal trafficking in works of art and antiquities (in particular related to burglary and receiving stolen property)*

**(c) *against the property of others***

- *robbery and blackmail (in particular extortion of protection money)*
- *forgery of money, checks and securities and passing off such forgeries*
- *credit card crime*
- *product piracy*
- *investment fraud*
- *computer crime*
- *fraud (Article K.1(5) of the Treaty on European Union)*

***and related***

- *illegal money laundering*
- *membership of a criminal organization.*

The Spanish delegation insisted on the following text:

**Text Article 2, paragraph 2  
Draft Convention Europol**

2. *In order to achieve progressively the objective mentioned in paragraph 1, Europol shall initially act to prevent and combat unlawful drug trafficking, crime in relation to nuclear and radioactive substances, immigrant smuggling, motorvehicle crime (in particular trafficking to other States and theft of goods in transit) and illegal money-laundering activities in connection with these forms of crime, terrorist activities, activities in connection with offenses perpetrated against life, liberty and properties*

*of persons, carried out by organized criminal groups with use of arms. Under the procedure laid down in Article VI of the Treaty on European Union, the Council may unanimously decide to instruct Europol to deal with other forms of crime listed in the Annex to this Convention or specific manifestations thereof. Before taking this decision, the Council shall instruct the Management Board to prepare its decision and in particular to set out the budgetary and staffing implications for Europol.*

- *Annex (List of other forms of crime referred to in Article 2, paragraph 2.*

1. *other forms*  
*(not modified)*

**(b) Recourse to the Court of Justice of the European Union**

1. With regard to a simple added regulation of competence the draft Convention provides that the European Court of Justice shall have jurisdiction in cases of
  - (a) differences of opinion between Member States or between Member States and Europol,
  - (b) proceedings brought by natural persons for infringement of the right to protection of their personal data,
  - (c) disputes between Europol and its employees.

In an alternative version submitted by the Presidency (EUROPOL 66), with regard to proceedings brought by individuals (see (b)), provides the possibility of proceedings against the respective national central unit before the competent national court or the competent national authority of the Member State in accordance with the rules of procedure of the respective Member State, including the possibility of the request for a preliminary ruling by the national courts. Another alternative is suggested, namely that the complainant can choose between a national court/a national authority and the Court of First Instance of the European Union.

2. (a) Certain Member States were of the view that a role should be given to the European Court of Justice. The Belgian delegation and the representative of the Commission were of the view that the European Court of Justice should handle disputes referred to under 1(a) and 1(c); whereas the Netherlands delegation shared this view for disputes under 1(a).
- (b) Other delegations stressed the intergovernmental nature of the cooperation provided for by Europol.

The United Kingdom delegation suggested that differences under

- 1(a) should be handled by the Council;
- 1(b) should be handled by national courts;
- 1(c) should be handled by Dutch courts.

(c) Body responsible for auditing Europol

1. The draft convention provides for the auditing to be performed by the Court of Auditors of the European Union with the modalities of auditing to be done autonomously by the Member States in a financial register. The Secretary-General of the European Court of Auditors has already agreed to such an arrangement.
2. Various proposals were discussed. Several delegations felt that there should be further reflection on the suggestion to have auditing performed by a Troika consisting of a representative of a Dutch national court on a permanent basis and representatives of the other courts by rotation according to a formula to be agreed.

(d) Parliamentary control of Europol

The Presidency presented the following options for parliamentary control

- recourse to existing arrangements under Article K6 of TEC,
- broaden the scope of provisions set out in Article K6,
- creation of a mixed Committee European Parliament/national parliament,
- creation of a Committee of national members of Parliament,
- exclusive control by the European Parliament.

The Belgian and Dutch delegations favoured the last option. The European Parliament could create a specific ad hoc Committee. The representative of the Commission pointed out that the cooperation set out in Article K1.9 does not exclude control by the European Parliament. At least full use should be made of Article K6. The United Kingdom delegation supported the first option.

Various delegations declared that they still have to define their position.

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