

EUROPEAN UNION  
THE COUNCIL

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# SEMDOC

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RESTREINT

EUROPOL 101

## NOTE

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from: French delegation

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Nos prev. docs: 8994/94 EUROPOL 89, 9319/94 ENFOPOL 114

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Subject: Draft Convention on the establishment of EUROPOL  
= Article 5 and a remodelled Title II (Articles 6 to 11a)

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## NOTE FROM THE FRENCH DELEGATION

Following on from the discussions in the ad hoc Working Party from 5 to 9 September and in Steering Group II on 12 and 13 September, the Presidency and delegations will find enclosed the French delegation's written proposals for Article 5 and a remodelled Title II (Article 6 to 11a) replacing the former Titles II and III.

The French delegation would like to be able to explain the content of its proposals at the meeting of the ad hoc Working Party on EUROPOL from 26 to 30 September.

The proposals have been drawn up on the basis of the Presidency text EUROPOL 64 REV 1. Amendments and additions to the drafting have been underlined.

### **Article 5: Liaison officers**

The broad thrust of the French proposal is that liaison officers' mutual co-operation function should be better integrated within EUROPOL (see paragraph 4) and that liaison officers should be treated equally with other EUROPOL staff (see paragraphs 5, 7 and 8) with due regard for security and the sensitive nature of the information stored at EUROPOL (see paragraphs 6 and 7).

### **Title II: Article 6 to 11a: information system**

As we have stated previously (see EUROPOL 89), we should like to keep to the principle of a single database confirmed by the Working Party (see EUROPOL 57).

Moreover, as Steering Group II emphasized in HAMBURG, EUROPOL cannot be built on mistrust of liaison officers.

Our proposal therefore reconciles these principles of transparency with the technical need to open temporary work files for crime analysis purposes, the content of which is, for practical and organizational reasons, accessible only to EUROPOL employees and liaison officers (see Article 6(1)).

All EUROPOL information is, by its nature, sensitive; whoever is accessing the information, access can only be justified by the need to meet the EUROPOL objectives set out in Article 2(1), with no regard for any subjective criterion. We have accordingly spelt out (Article 10) the different procedures whereby liaison officers may access work files.

Lastly, we consider, as previously proposed in the ad hoc Working Party, that information that has been enhanced by the work of the analysts should be returned to the central database.

The rational approach of the proposal we are submitting today should also enable the problems of data protection and responsibility for data to be dealt with in a manner more in keeping with the sovereignty of states and the intergovernmental nature of the third pillar of the Union Treaty.

To conclude, the Convention must not be an extrapolation of one or other country's domestic legislation, but a consensual text containing provisions and principles which we already have in common.

## **ARTICLE 5**

### **Liaison officers**

1. After consulting EUROPOL each national unit shall send at least one liaison officer to EUROPOL. Except as otherwise stipulated in special provisions of this Convention, these liaison officers shall be subject to the national law of the seconding State.
2. Liaison officers shall be instructed by their national unit to represent their seconding State within EUROPOL in accordance with the national law of that seconding State and subject to EUROPOL's operational rules.
3. Subject to Article 4(4), liaison officers shall effect the exchange of information between seconding national units and EUROPOL, in keeping with the objectives set out in Article 2(1), in particular by:
  - forwarding information from seconding national units to EUROPOL,
  - forwarding information from EUROPOL to seconding national units, and
  - cooperating with EUROPOL employees and advising them as to the analysis and use of information of direct or indirect interest to the seconding Member State.
4. At the same time, liaison officers shall effect the exchange of information between Member States in accordance with national law and in keeping with the objectives set out in Article 2(1).
5. Liaison officers shall have the right to consult the data of the information system contained in:
  - the central database referred to in the second subparagraph of Article 6(1);
  - the work files referred to in the third subparagraph of Article 6(1).
6. Article 23 shall apply to the activities of liaison officers.

7. The rights and obligations of liaison officers in relation to EUROPOL shall be laid down in conditions of service for liaison officers to be adopted unanimously by the Council, on a proposal from the Management Board, in accordance with the procedures laid down in Title VI of the Treaty on European Union.
8. Liaison officers shall enjoy the privileges and immunities necessary for the performance of their tasks in accordance with the Protocol referred to in Article 38.
9. EUROPOL shall provide liaison officers with the necessary premises for their activities in the EUROPOL building. Other costs involved in sending liaison officers and the equipment they require shall be borne by the seconding Member State.

## **TITLE II**

### **Information system**

## **ARTICLE 6**

### **Establishment of the information system**

1. In order to fulfil the objectives set out in Article 2(1), EUROPOL shall establish and maintain a computerized information system.

The information system shall consist of:

- a central database into which Member States and EUROPOL can directly input and from which they can directly extract data.
- work files created temporarily for variable periods in order to perform EUROPOL's tasks of crime analysis. These work files shall contain data extracted from the central database and data enhanced by analysis work. Such data shall be returned to the central database.

Consultation of all the data contained in the information system shall be by means of an index system.

2. EUROPOL shall be responsible for:
  - (1) compliance with the provisions governing cooperation on and operation of the information system, and
  - (2) the proper working of the information system in technical and operational respects. EUROPOL shall in particular take all necessary measures to ensure that the measures referred to in Articles 19 and 23 regarding the information system are properly implemented.
  - (3) The national unit in Member States shall be responsible for communications with the information system. It shall in particular be responsible for the security measures referred to in Article 23 in respect of the data-processing equipment used within the territory of the Member State in question, for the review in accordance with Article 19 and, insofar as required under the laws, regulations, administrative provisions and procedures of that Member State, for the proper implementation of this Convention in other respects.

## **ARTICLE 7**

### **Content of the information system**

1. The information system may only be used to store, modify and utilize data necessary to fulfil the objectives set out in Article 2(1). These data shall relate to:
  - (1) persons suspected of a criminal offence for which EUROPOL is competent under Article 2(2);
  - (2) persons definitively convicted of such a criminal offence;
  - (3) persons covered by one of the two preceding subparagraphs where there is some evidence to suggest that they are preparing to commit criminal offences which fall within EUROPOL's field of competence as defined in Article 2(2);
  - (4) persons who may be able to provide any information on criminal offences falling within EUROPOL's field of competence.
2. Personal data as referred to in Article 7(1) may only include the following details:
  - (1) surname, maiden name, given names and any aliases or assumed names,
  - (2) date and place of birth,
  - (3) nationality,
  - (4) sex, and
  - (5) where necessary, other characteristics likely to assist in identification, including in particular physical characteristics not subject to change.
3. In addition to the data referred to in Article 7(2) and data on the inputting unit, the information system may also be used to store, modify and utilize the following additional data concerning the persons referred to in paragraph 1:
  - (1) criminal offences, alleged crimes and when, where and in what circumstances they were committed,
  - (2) means which were or may be used to commit crimes,

(3) establishments frequented,

(4) departments handling the case and their filing references,

(5) the characteristics relating to these criminal offences and any information useful for a better knowledge of the forms of crime dealt with by EUROPOL.

Where EUROPOL inputs the data itself as well as giving its filing reference it shall also indicate whether the data was provided by a third party or is the result of its own analyses.

4. If the person concerned is the subject of a definitive legal decision of nonsuit, nolle prosequi or acquittal, it shall not be permissible to store, modify or utilize the data relating thereto.

The aforementioned decision shall not prevent other data relating to the person concerned being retained in the database in respect of the situations laid down in paragraph 1.



## **ARTICLE 8**

### **Work files**

The work files provided for in the third subparagraph of Article 6(1) may be created by EUROPOL employees and liaison officers.

The creation of a work file shall be subject to the approval of the Management Board which must be informed of its content and the categories of persons concerned. The Management Board shall act unanimously. In an emergency the members of the Management Board shall be consulted by written procedure expedited by the EUROPOL directorship.

The joint supervisory body referred to in Article 22 shall be immediately informed of the creation of a work file.

## **ARTICLE 9**

### **Index system**

The index system referred to in Article 6(2) shall include the following personal data: surname, maiden name, given names, aliases or assumed names.

All data of this type must appear in the index as soon as it is taken into account by EUROPOL, whether from national units, analysis work or third countries or bodies.

The index system may be consulted only by EUROPOL employees and liaison officers.

Access to the index system shall be designed in such a way that it is not possible to establish connections and further conclusions concerning the content of files.

## ARTICLE 10

### **Right of access to the information system**

1. The right to input data into the information system and retrieve it therefrom shall be exercised where this complies with EUROPOL's objectives as set out in Article 2(1).

It must also be done in accordance with laws, regulations, administrative provisions and the procedures of the retrieving unit, subject to any more detailed provisions contained in this Convention.

2. Only national units and EUROPOL, including the liaison officers, shall be entitled to input data into the central database and retrieve it therefrom.
3. Only EUROPOL employees and liaison officers with a need to know shall be entitled to input data into the files referred to in the third subparagraph of Article 6(1) and retrieve it therefrom.

Those who have a need to know shall be:

- liaison officers whose seconding State is the source of the information contained in the analysis files;
- liaison officers whose seconding State may be concerned by the analyses in progress: they shall then be associated with the analysis by joint decision of the liaison officers mentioned in the preceding subparagraph and the EUROPOL employees concerned.
- liaison officers to whom consultation of the index reveals that their seconding State is concerned and who will therefore be associated with the analysis work.

The Management Board shall be notified of any difficulties in applying this Article.

4. Only the unit which entered the data may amend, correct or delete such data. ~~Where a~~ unit has reason to believe that data as referred to in Article 7(1) is incorrect or ~~wishes~~ to supplement it, it shall immediately inform the inputting unit; the latter shall examine such notification without delay and if necessary amend, supplement, correct or ~~delete~~ the data immediately. Where data as referred to in Article 7(3) is stored on a ~~person~~, any unit may enter additional data as referred to in Article 7(3). ~~Where there is an~~ obvious contradiction between the data input, the units concerned shall consult ~~each~~ other and reach agreement. Where a unit intends to delete altogether ~~personal data~~ as referred to in Article 7(1) input by it and where data as referred to in Article 7(3) ~~is held~~

on the same person but input by other units, responsibility in terms of data protection legislation pursuant to Article 14(1) and the right to amend, supplement, correct and delete such data pursuant to Article 7(1) shall be transferred to the next unit to have entered data as referred to in Article 7(3) on that person.

5. Responsibility for the permissibility of retrieval from, input into and modifications within the information system shall lie with the retrieving, inputting or modifying unit; it must be possible to identify that unit. The communication of information between national units and the competent authorities in the Member States shall be governed by national law.

## **ARTICLE 11**

### **Collection by EUROPOL of personal data**

1. At EUROPOL's request or at their own initiative, the national units shall communicate to EUROPOL all information required for the performance of its tasks pursuant to Article 3(1)(1) and for the achievement of the objectives set out in Article 2(1).
2. Where there is reason to believe that further intelligence in addition to the information referred to in paragraph 1 above is necessary for EUROPOL to achieve its objective, EUROPOL may ask States which are not members of the European Union, international organizations and institutions set up within the framework of the European Union to communicate relevant information.

The Council, acting unanimously in accordance with the procedures laid down in Title VI of the Treaty on European Union and after consulting the Management Board, shall draw up rules for this purpose.

3. The computerized information system implemented by EUROPOL shall under no circumstances be connected to other automatic processing systems.

## **ARTICLE 11A**

### **Utilization of personal data**

The national unit which inputs the data may make all utilization or dissemination of the data subject to prior authorization.

As regards data enhanced by analysis work and data from third States or organizations, the liaison officers whose seconding States may be concerned by such data shall confer with EUROPOL employees before utilizing or disseminating it in any way.

The Management Board shall be notified of any difficulties in applying this Article.

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