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Subject: Revised version of the Convention on the establishment of Europol

COUNCIL ACT
of
drawing up the Convention,
on the basis of Article K.3 of the Treaty on European Union,
on the establishment of a European Police Office
(Europol)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article K.3(2)(c) and Article K.1(9) thereof,

Whereas for the purposes of achieving the objectives of the Union the Member States regard the establishment of a European Police Office as a matter of common interest,

Has decided on the drawing up of the Convention, the text of which is ANNEXED, which has been signed today by the Representatives of the Governments of the Member States of the Union;

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

Done at

For the Council
The President

CONVENTION,
on the basis of Article K.3 of the Treaty on European Union,
on the establishment of a European Police Office
(Europol)

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The High Contracting Parties to the present Convention, Member States of the European Union, -

referring to the Council act of ...

CONSIDERING the urgent problems arising from terrorism, unlawful drug trafficking and other serious forms of international crime,

WHEREAS there is a need for progress in solidarity and co-operation between the Member States of the European Union, particularly through an improvement in police co-operation between the Member States,

WHEREAS such progress should enable the protection of public security and order to be further improved,

WHEREAS the establishment of a European Police Office (Europol) was agreed in the Treaty on European Union of 7 February 1992,

AWARE of the Decision of the European Council of 29 October 1993 that Europol should be established in the Netherlands and should have its seat at The Hague,

MINDFUL of the common objective of improving police co-operation in the field of terrorism, unlawful drug trafficking and other serious forms of international crime through a constant, confidential and intensive exchange of information between Europol and Member States' national units,

DETERMINED to leave other forms of bilateral or multilateral cooperation unaffected by the forms of cooperation laid down in this Convention,

CONVINCED that particular attention must be paid to the protection of the rights of individuals, and in particular to the protection of their personal data, in the field of police co-operation as well,

WHEREAS, as regards the collection, evaluation and transfer of sensitive police information, legal protection and political (-) control of Europol is of great importance,

Whereas the activities of Europol under this Convention are without prejudice to the powers of the European Community and whereas Europol and the Community have a mutual interest, in the framework of the European Union, in establishing types of cooperation enabling each of them to perform their respective tasks as effectively as possible -

have agreed as follows:

Title I
Establishment and tasks

Article 1
Establishment

(1) The Member States of the European Union, hereinafter referred to as "Member States", hereby establish a European Police Office, hereinafter referred to as "Eúrópol".

(2) Europol shall liaise with a single national unit in each Member State, to be established or designated in accordance with Article 4.

Article 2

Objectives

(1) The objective of Europol shall be, within the framework of co-operation 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.

(2) In order to achieve progressively the objectives mentioned in Article 1, Europol shall initially act to prevent and combat unlawful drug trafficking, crime connected with nuclear and radioactive substances, illegal immigrant smuggling, motor vehicle 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 Title 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 its decision, the Council shall instruct the Management Board to prepare its decision and in so doing in particular to set out the budgetary and staffing implications for Europol.

(3) For the purposes of this Convention, "competent authorities" shall mean all public bodies existing in the Member States which are responsible under national law for preventing and combating criminal offences.

(4) For the purposes of paragraphs 1 and 2, "unlawful drug trafficking" shall mean 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 3

Tasks

(1) In the framework of its objectives pursuant to Article 2 Europol shall have the following principal tasks:

1. to facilitate exchange of information between the Member States,
2. to collect, collate and analyse (-) information and intelligence,
3. to notify the competent authorities of the Member States without delay via the national units referred to in Article 4 of information concerning them and of connections between criminal offences detected (-).
4. to support national investigations by forwarding all relevant information to the national units,
5. to maintain computerized collections of information containing data in accordance with Articles 7, 10 and 10a.

(2) In order to improve the effectiveness of the competent authorities in the Member States through the national units in the framework of the objectives pursuant to Article 2, Europol shall furthermore have the following additional tasks:

1. to develop expertise in the investigative procedures of the competent authorities in the Member States and to provide advice on investigations,
2. to provide strategic intelligence to assist and promote efficient and effective use of national operational resources,
3. to prepare general situation reports.

(3) In addition, Europol may within the framework of its objectives under Article 2 and in accordance with its staffing and budgetary possibilities, assist Member States through advice and research in the following areas:

1. training of members of their competent authorities,
2. organization and equipment of those authorities,
3. crime prevention methods,
4. technical and forensic police methods and investigative procedures.

Article 4
National Units

(1) Each Member State shall establish or designate a national unit to carry out the tasks listed in this article.

(2) The national unit shall be the only liaison body between Europol and the competent authorities in the Member States. Relationships between the national unit and the competent authorities shall be governed by national law.

(3) The Member State shall take the necessary measures to ensure that the national units fulfil their tasks and, in particular, to secure access by national units to relevant national data.

(4) It shall be the task of the national unit

1. to supply Europol of its own initiative with information and intelligence which are necessary for it to carry out its tasks;
2. to respond to Europol's requests for information, intelligence and advice and keep its information and intelligence up-to-date;
3. to keep information and intelligence up to date;
4. to evaluate information and intelligence in accordance with national law for the competent authorities and transmit this material to them;
5. issue requests for advice, information, intelligence and analysis to Europol;
6. to supply Europol with information for storage in the computerized collections;
7. to see to the accuracy of every exchange of information and itself.

(5) A national unit shall, notwithstanding Article K.2(2) of the Treaty on European Union, not be obliged in an individual case to supply the information and intelligence provided for in paragraph 4, points 1, 2 and 6 and in Articles 6 and 10 if this would mean:

1. harming essential national security interests, or
2. jeopardizing the success of investigation_ under way or the safety of individuals.

(6) The costs incurred by the national units for communications with Europol shall be national costs and, apart from the costs of connection, shall not be charged to Europol.

Article 5

Liaison officers

(1) Each national unit shall second at least one liaison officer to Europol. The number of liaison officers which may be sent by each Member State to Europol shall be laid down by unanimous decision of the Management Board; the decision may be altered at any time by unanimous decision of the Management Board. Except as otherwise stipulated in special provisions of this Convention, liaison officers shall be subject to the national law of the seconding State.

(2) The liaison officers shall be instructed by their national units to represent the interests of the latter within Europol in accordance with the national law of the seconding State and in compliance with the provisions governing the administration of Europol.

(3) Without prejudice to Article 4(4) and (5), the liaison officers shall, within the framework of the objectives laid down in Article 2, assist the exchange of information between the national units which have seconded them and Europol, in particular by:

1. providing Europol with information from the seconding national unit, insofar as this is necessary in particular cases,
2. forwarding information from Europol to the seconding national unit, and
3. cooperating with the officials of Europol by providing information and advice in the analysis of the information concerning the seconding Member State.

(4) Via their national units, the liaison officers shall assist the exchange of information and the coordination of the resulting measures including personal information, between Member States in accordance with their national law and within the framework of the objectives laid down in Article 2.

(5) To the extent necessary for the performance of the tasks under paragraph 3 above, the liaison officers shall have the right to direct access to:

1. the information system in accordance with Article 8,
2. the other data files in accordance with Article 10(2), and
3. the index system in accordance with Article 10a.

(6) Article 23 shall apply *mutatis mutandis* to the activity of the liaison officers.

(7) Details of the rights and obligations of liaison officers in relation to Europol shall be determined unanimously by the Management Board.

(8) (-)

(9) Europol shall provide Member States free of charge with the necessary premises in the Europol building for the activity of their liaison officers. All other costs which arise in connection with seconding liaison officers shall be borne by the seconding Member State; this shall also apply to the costs of equipment of liaison officers, to the extent that the Management Board does not unanimously recommend otherwise on a case-by-case basis when drawing up the budget of Europol.

Article 5a

Computerized collections of information

Europol shall maintain a computerized collection of information with the following components:

1. an information system with a restricted and precisely defined content which will allow rapid reference to the information available to the Member States and Europol (Article 6),
2. work files established for the purposes of analysis and containing comprehensive information (Article 10) and
3. an index system containing only keywords from the analysis files referred to in point 2 above (Article 10a).

Title II
Information system

Article 6

Establishment of the information system

(1) In order to perform its tasks, Europol shall establish and maintain a computerized information system (-) into which Member States and Europol can directly input and from which they can directly extract data.

(2) Europol shall be:

1. competent for compliance with the provisions governing cooperation on and operation of the information system, and
2. responsible for 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 concerning:

1. persons suspected or convicted of a criminal offence for which Europol is competent under Article 2,
2. persons concerning whom the facts provide justified grounds for presuming that they will commit criminal offences for which Europol is competent under Article 2,

required for the performance of Europol's tasks.

(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
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. offences, alleged crimes and when and where they were committed,
2. means used to commit the crimes,
3. departments handling the case and their filing references.
4. suspicion that they belong to a criminal organization.

These data may also be put in even when they do not yet reveal any details as to person.

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

(4) If proceedings against the person concerned are dropped or if that person is acquitted by a final decision, the data concerned with this decision shall be deleted. (-)

Article 8

Right of access to the information system

(1) Only the national units, including the liaison officers, and Europol shall be entitled to input data directly into the information system and retrieve it therefrom. Data may be retrieved where this is necessary for the performance of Europol's tasks in a particular case; retrieval shall be affected in accordance with the laws, regulations, administrative provisions and procedures of the retrieving unit, subject to any more detailed provisions contained in this Convention.

(2) 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(2) are incorrect or wishes to supplement them, 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) are 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(2) input by it and where data as referred to in Article 7(3) are held on the same person but input by other agencies, 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(2) shall be transferred to the next unit to have entered data as referred to in Article 7(3) on that person. The unit intending to delete shall inform the unit to which responsibility in terms of data protection is transferred of its intention.

(3) 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.

[(4) In the view of the German delegation a provision should be included which takes account of Germany's special position as a federal State.]

Article 9

Title III

Collection, processing and utilization of personal data for analysis

Article 10

Collection, processing and utilization of personal data

(1) Where this is necessary in connection with the objectives laid down in Article 2, Europol may store, amend and utilize data in other data, along with non-personal data, files on:

1. persons as referred to in Article 7(1),
2. persons who might serve as witnesses in any future criminal prosecution,
3. persons concerning whom there are grounds for believing that they may be the victims of a future criminal offence,
4. contacts and escorts, and
5. persons who may provide information on criminal offences for which Europol is competent under Article 2.

Data on persons referred to in point 1 of the first sentence which extend beyond the scope of Article 7(2) and (3) may be stored only if it is to be expected, because of the nature of the act or of its perpetration, or any other intelligence, that such persons will in the future commit criminal offences for which Europol is competent under Article 2. The Council, acting unanimously in accordance with the procedure laid down in Title VI of the Treaty on European Union and after consulting the Management Board, shall lay down data file rules containing additional details, in particular as regards the nature of the data stored.

(2) Only Europol shall be entitled to input data into data files and retrieve them therefrom. The liaison officer shall be entitled to retrieve data from the data files referred to in paragraph 1 where knowledge of such data is necessary for the performance of his tasks pursuant to Article 5(3)(3) as part of an analysis project. The details of retrieval, in particular the number of persons entitled to retrieve and the preconditions for and scope of entitlement to retrieve, shall be laid down in the relevant order opening a data file pursuant to Article 11.

(3) At Europol's request or at their own initiative, the national units shall, subject to Article 4(5), communicate to Europol all information required for the performance of its tasks pursuant to Article 3(1)(2). The Member States shall communicate such data only provided that they may also be processed under national law for purposes of preventing, combating or analysing criminal offences.

(4) Where there is reason to believe that further intelligence in addition to the information referred to in paragraph 3 above is necessary for the performance of Europol's tasks pursuant to Article 3(1)(2), Europol may ask:

1. the European Communities and their subordinate public-law agencies,
2. other public-law agencies within the framework of the European Union,
3. agencies which are based on (-) an agreement between two or more Member States of the European Union,
4. non-Member States,
5. international organizations and their subordinate public-law agencies,
6. other public-law agencies which are based on an agreement between two or more States, and
7. the International Criminal Police Organization (third units)

to communicate relevant information. The Council, acting unanimously in accordance with the procedure laid down in Title VI of the Treaty on European Union and after consulting the Management Board, shall draw up for this purpose the rules to be observed by Europol.

(5) Insofar as Europol is entitled under other conventions to gain computerized access to data from other information systems, Europol may retrieve personal data by such means if this is necessary for the performance of its tasks pursuant to Article 3(1)(2).

Article 10a

Index system

- (1) An index system shall be created by Europol on the data stored on the files referred to in Article 10(1), which shall contain exclusively key-words (-).
- (2) In addition to Europol, the index system may also be consulted by liaison officers in order to determine, on the basis of the data called up, whether the files referred to in Article 10(1) contain data concerning the seconding Member State. Access by liaison officers shall be designed in such a way that it is not possible to establish connections and further conclusions concerning the content of the files exceeding the stipulation in the first sentence.
- (3) The Management Board shall unanimously decide on further details concerning the design of the index system.

Article 11

Order opening a data file

(1) For every computerized data file containing personal data operated by Europol for the purpose of performing its tasks referred to in Article 10, Europol shall specify in an order opening the file, which shall require the approval of the Management Board:

1. the file name,
2. the purpose of the file,
3. the group of persons on whom data are stored,
4. the nature of the data to be stored,
5. the type of personal data used to open the file,
6. the supply or input of the data to be stored,
7. the conditions under which the personal data stored in the file are to be communicated to which recipients and under what procedure,
8. the time-limits for examination and duration of storage,
9. the audit log.

The detailed rules governing the retrieval of data by liaison officers pursuant to Article 10(2) must be unanimously approved by the Management Board. The joint supervisory body referred to in Article 22 shall be consulted before any order opening a data file is issued.

(2) If the urgency of the task to be performed is such as to preclude the participation of the bodies referred to in paragraph 1 above, the Director may issue an immediate order. The procedure pursuant to paragraph 1 above shall subsequently be followed without delay.

Title IV

Common provisions on information processing

Article 12

Duty to notify

Europol shall promptly inform the national units and, at their request, their liaison officials, of any information concerning their Member State and of connections between criminal offences detected by it for which Europol is competent under Article 2. Information and intelligence concerning other criminal offences of considerable significance, of which Europol becomes aware in the course of its duties, may also be communicated.

Article 13

Standard of data protection

(1) By the time of the entry into force of this Convention at the latest each Member State shall, under its national legislation, take the necessary measure in relation to the processing of personal data in data files in the framework of this Convention to ensure a standard of data protection which at least corresponds to the standard resulting from the implementation of the principles of the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data of 28 January 1981, and, in doing so, shall take account of Recommendation No. R(87) 15 of the Committee of Ministers of the Council of Europe of 17 September 1987 concerning the use of personal data in the police sector.

(2) The communication of personal data provided for in this Convention may only begin once the data protection arrangements required under paragraph 1 above and under Article 17(8) have entered into force on the territory of the relevant Member State involved in such communication.

(3) In the collection, processing and utilization of personal data Europol shall take account of the principles of the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data of 28 January 1981 and of Recommendation No. R(87) 15 of the Committee of Ministers of the Council of Europe of 17 September 1987 concerning the use of personal data in the police sector.

Article 14

Responsibility under data protection legislation

- (1) With regard to data stored at Europol, responsibility in terms of data protection legislation, in particular as regards the legality of the collection of data, its transmission to Europol and its input as well as its accuracy and its up-to-date nature, and verification of the storage time-limits shall, save as otherwise provided in this Convention, lie with the Member State which input or otherwise communicated the data.
- (2) Responsibility in terms of data protection legislation pursuant to paragraph 1 above for data communicated to Europol by third parties or which is the result of analyses conducted by Europol, shall lie with Europol. In addition, save as otherwise specified in this Convention, responsibility for the permissibility of processing data referred to in paragraph 1 and the first sentence of this paragraph input by Europol into the information system pursuant to Articles 7 and 10 shall lie with Europol.
- (3) Europol shall store data in such a way that it can be established by which Member State or third party the data was transmitted or whether it was the result of an analysis by Europol.

Article 14a

Audit log rules

On average, Europol shall log at least one in ten retrievals of personal data in order to check whether they are permissible. Log data shall only be used for that purpose by Europol and the supervisory bodies referred to in Articles 21 and 22 and shall be deleted after six months, unless the data are further required for on-going control. The latter can be decided upon by the Management Board following consultation with the joint supervisory body.

Article 15

Rules on the use of data

(1) Personal data retrieved from the information system, the index system or the other files or communicated by Europol shall be used in accordance with the laws, regulations, administrative provisions and procedures of the authority which uses that data, save as otherwise provided by this Convention.

(2) Member States may use the data referred to in paragraph 1 only to prevent or combat criminal offences of considerable significance. Notwithstanding this provision, Member States may use the data for other, in particular also intelligence and secret service, purposes with the prior consent of the unit which communicated the data and in accordance with the conditions stipulated by that unit. Europol may use the data referred to in paragraph 1 only for the performance of its tasks as referred to in Article 3. If, in the case of certain data, the communicating Member State or the communicating third unit as referred to in Article 10(4) stipulates particular restrictions on use to which such data is subject in that Member State or by third parties, such restrictions shall also be complied with by the user of the data.

(3) Data as referred to in paragraph 1 may be used only by the competent authorities in each Member State. Communication to other authorities of the Member States requires the prior consent of the unit which communicated the data to Europol.

Article 16

Communication of data to third units

(1) Europol may communicate personal data which it holds to third parties within the meaning of Article 10(4), where:

1. this is necessary in (-) individual cases for the purposes of preventing or combating criminal offences for which Europol is competent under Article 2,
2. an adequate level of data protection is ensured there,
3. this is allowable under the general rules within the meaning of paragraph 3, and
4. no restrictions have been communicated by the Member State which transmitted the data to Europol.

(2) The adequacy of the level of data protection afforded by third units within the meaning of Article 10(4) as referred to in paragraph 1 shall be assessed taking into account all the circumstances which play a part in the communication of personal data; in particular, the following shall be taken into account:

1. the nature of the data;
2. the purpose for which the data is intended;
3. the duration of the intended processing, and
4. the general or specific provisions applying for the third units within the meaning of Article 10(4).

(3) In accordance with the procedure in Title VI of the Treaty on European Union, and taking into account the circumstances referred to in paragraph 2, the Council, acting unanimously, shall determine the general rules for the communication of personal data by Europol to the third units within the meaning of Article 10(4). The Management Board shall prepare the Council Decision and consult the joint supervisory body referred to in Article 22.

(4) Europol shall be responsible for authorizing communication. Europol shall keep a record of communications of data and of the grounds for such communications. The communication of data shall be authorized only if the recipient gives an undertaking that the data will be used only for the purpose for which it was communicated. This shall not apply to the communication of the necessary personal data in the context of an inquiry by Europol.

(5) If there are grounds for assuming that:

1. the proper performance of the tasks falling within the sphere of competence of a Member State will be jeopardized,
2. the public security and order of a Member State will be jeopardized or its general welfare otherwise prejudiced, or
3. essential principles of the legal order of the Member State communicating the data would be called into question

by the communication of data as referred to in paragraph 1, Europol shall obtain the consent of the Member State concerned before communicating the data. Subject to the conditions in the first sentence, a Member State may mark or reference certain data communicated by it to indicate that its consent is to be obtained before any communication pursuant to paragraph 1.

(6) Where the communication provided for in paragraph 1 concerns information subject to the requirement of confidentiality (-), it shall be permissible only insofar as an agreement on confidentiality exists between Europol and the recipient.

Article 17

Right to information

(1) Information shall be provided by Europol to the data subject upon his/her application concerning:

1. data relating to his/her person held by Europol, including information relating to the source or the recipient of such data, and
2. the purpose of storage.

If the personal data are stored in documents, the information shall be provided only if the effort involved in providing it is not disproportionate to the interest in the information stated by the data subject. The application may also be submitted to the national central units, which shall forward it to Europol (-).

(2) Decisions on applications for information shall be taken within three months of receipt by Europol or a national central unit.

(3) Paragraph 1 shall not apply in the case of personal data stored only for the purposes of data security or the supervision of data protection.

(4) Information shall not be provided, where this is required

1. for the proper performance of Europol's tasks,
2. for the protection of the security of Member States, of public safety or for combating criminal acts,
3. for the protection of the rights and freedoms of third parties,

and the interest of the data subject in the provision of information shall thus be outweighed by such considerations.

(5) (-) If the data were communicated by a Member State, Europol may provide information only if the Member State concerned has first been given an opportunity to adopt a position.

(6) No justification shall be required for a refusal to provide information if notification of the factual and legal grounds on which the decision is based would jeopardize the intended aim of the refusal to provide information. In that case, the data subject shall be advised that he may address himself to the joint supervisory body referred to in Article 22.

(7) If no information is provided to the data subject, it shall be provided to the joint supervisory body at the data subject's request. Notifications from the joint supervisory body to the data subject must not enable any inferences to be drawn regarding Europol's state of knowledge unless Europol consents to more extensive information. In the cases referred to in paragraph 5, the Member State concerned shall first be given an opportunity to adopt a position.

(8) Information shall be provided free of charge.

(-)

(-)

Article 18

Correction and deletion of data in data files

(1) If it emerges that data held by Europol is incorrect or its input or storage contravenes this Convention, Europol shall correct or delete such data. If a Member State has communicated the data, Europol may correct or delete it only in consultation with that Member State. If the data was input directly into the information system by a Member State, Europol and the inputting Member State shall reach agreement on the correction or deletion. The inputting Member State shall make the correction or deletion. Until such agreement is reached, the data shall be characterized as subject to agreement.

(2) Under the conditions laid down in the first sentence of paragraph 1, the data subject shall have the right vis-à-vis Europol to correction or deletion of data. (-)

(3) If it emerges that incorrect data or data to be deleted has been communicated by Europol or a Member State, the recipient shall be notified accordingly.

Article 19

Time limits for the storage and deletion of data files

(1) Data in data files shall be held by Europol only for as long as is necessary for the performance of its tasks. The need for continued storage shall be reviewed no later than three years after the input of data. Review of data stored in the information system and its deletion shall be carried out by the inputting unit. Review of data stored in other Europol data files and their deletion shall be carried out by Europol. Europol shall automatically inform the Member States three months in advance of the expiry of the time limits for reviewing the storage of data.

(2) During the review, the units referred to in the third and fourth sentences of paragraph 1 above may decide on continued storage of data until the next review if this is still necessary for the performance of Europol's tasks. If no decision is taken on the continued storage of data, it shall automatically be deleted.

(3) Storage of personal data relating to individuals as referred to in the second sentence of Article 10(1) may not exceed a total of three years. Each time limit shall begin to run afresh on the date on which an event leading to the storage of data relating to that individual occurs. The need for continued storage shall be reviewed annually and the review documented.

(4) Where a Member State deletes from its national data files data communicated to Europol which are stored in other Europol data files, it shall inform Europol accordingly. In such cases, Europol shall delete the data unless it has further interest in it which is based on intelligence that is more extensive than that possessed by the communicating Member State. Europol shall inform the Member State concerned of the continued storage of such data.

(5) Deletion shall not take place where the protection interests of the data subject would be prejudiced. In such cases, the data may be used only with the consent of the data subject.

Article 20

Correction and Storage of data in paper files

(1) If it emerges that data in Europol's paper files is no longer necessary for the performance of its tasks or if their inclusion is in contravention of this Convention, the paper file shall record the fact that such data may no longer be used. The entire file shall be destroyed if it emerges that the entire file is no longer necessary for the performance of Europol's tasks or the entire content of the file is in contravention of this Convention. Destruction shall not take place if there are grounds for assuming that the legitimate interests of the data subject would otherwise be prejudiced.

(2) If it emerges that data in Europol paper files is incorrect, this shall be recorded in the file.

(3) Under the conditions laid down in paragraphs 1 and 2, the data subject shall have the right vis-à-vis Europol to correction, destruction of paper files or the inclusion of a note. (-) Article 18(3) shall apply mutatis mutandis.

Article 21

National supervisory body

(1) Each Member State shall designate a national supervisory body, the task of which shall be to monitor independently, in accordance with its respective national law, the permissibility of input and retrieval of data and any other communication of personal data to Europol by the Member State concerned and to examine whether this violates the rights of the data subject. The supervisory body shall have access via the national central unit to the data bank of the information system for this purpose. In this respect the national supervisory body shall also supervise the activities of its respective liaison officers, including the retrieval of data from the files referred to in Articles 10(1) and 10a. For this purpose, the national supervisory bodies shall have access to the offices and documents of the respective liaison officers (-) and, in the framework of their right of access, via this access to the files referred to in Articles 10 and 10a.

(2) Each individual shall have the right to request the national supervisory body to examine the permissibility of input of data into the information system and of any other communication of his personal data to Europol as well as the retrieval of data by the Member State concerned. This right shall be exercised in accordance with the national law of the Member State to the national supervisory body of which the request is made. The national supervisory body shall inform the person making the request in general terms of his right to appeal to further supervisory bodies.

Article 22

Joint supervisory body

(1) An independent joint supervisory body shall be set up, which shall have the task of reviewing, in accordance with this Convention, the activities of Europol in order to establish whether the rights of the data subject are violated by the processing and utilization of the data held by Europol. In addition, it shall supervise the activities of liaison officers, insofar as the latter retrieve data from the files referred to in Articles 10(1) and 10a. The joint supervisory body shall be composed of not more than two representatives of each of the national supervisory bodies. Each Member State shall have one vote.

(2) Europol must assist the joint supervisory body in the performance of the latter's tasks. In doing so, it shall, in particular, provide that body with:

1. information in response to its questions as well as an opportunity to inspect all documents, and access to the data stored, and
2. access at any time to all its premises.

(3) The joint supervisory body shall also be competent for the examination of questions relating to implementation and interpretation in connection with Europol's activities as regards the processing and utilization of personal data, for the examination of questions relating to checks carried out independently by the national supervisory bodies of the Member States or relating to the exercise of the right to information, as well as for drawing up harmonized proposals for common solutions to existing problems.

(4) Each individual shall have the right to request the joint supervisory body to examine the permissibility of the collection of data by Europol and the processing and utilization of his/her personal data held by Europol.

(5) If the data to be examined was communicated by a Member State, the joint supervisory body shall inform, insofar as necessary, the national supervisory body of that Member State.

(6) The joint supervisory body shall notify the Director of Europol of the results of its checks. It may accompany them with proposals for the improvement of data protection, in particular order to eliminate any shortcomings established in the processing or utilization of personal data.

(7) If the joint supervisory body notes any violations of the provisions of this Convention in the processing or utilization of personal data, it shall make a complaint to the Director of Europol and shall request him to comment within a time limit to be determined by it. The Director shall inform the Management Board accordingly. The joint supervisory body may refrain from making a complaint or dispense with comments in particular where the shortcomings are minor or have been remedied in the meantime.

(8) The joint supervisory body shall draw up activity reports at regular intervals. In accordance with the procedure in Title VI of the Treaty on European Union these shall be forwarded to the Council and to those bodies to which the national supervisory bodies forward their reports; the Management Board shall first have the opportunity to deliver an opinion, which shall be attached to the reports.

(9) The joint supervisory body shall unanimously adopt its rules of procedure. It shall set up a secretariat to perform its day-to-day business. Authority to carry out checks may be transferred to the secretariat.

Article 23
Data security

(1) Europol shall take the necessary technical and organizational measures to ensure the implementation of this Convention. Measures shall only be necessary where the effort they involve is proportionate to the objective they are designed to achieve in terms of protection.

(2) In respect of automated data processing at Europol each Member State and Europol shall implement measures designed to,

1. deny unauthorized persons access to data processing equipment used for processing personal data (equipment access control),
2. prevent the unauthorized reading, copying, modification or removal of data media (data media control),
3. prevent the unauthorized input of data and the unauthorized inspection, modification or deletion of stored personal data (storage control),
4. prevent the use of automated data processing systems by unauthorized persons using data communication equipment (user control),
5. ensure that persons authorized to use an automated data processing system only have access to the data covered by their access authorization (data access control),
6. ensure that it is possible to verify and establish to which bodies personal data may be transmitted using data communication equipment (communication control),
7. ensure that it is subsequently possible to verify and establish which personal data has been input into automated data processing systems and when and by whom the data was input (input control) and
8. prevent unauthorized reading, copying, modification or deletion of personal data during transfers of personal data or during transportation of data media (transport control).
9. ensure that installed systems may, in case of interruption, be immediately restored. (Reconversion).

10. ensure that the functions of the system perform without fault, that the appearance of faults in the functions is immediately reported (Reliability) and that stored data are not falsified (Genuineness).

(-)

Title V

Legal status, organization and financial provisions

Article 24

Legal capacity

(1) Europol shall have legal personality.

(2) Europol shall enjoy in each Member State the most extensive legal and contractual capacity available to legal persons under that State's law. Europol may in particular acquire and dispose of moveable or immoveable property and be a party to legal proceedings.

(3) Europol shall be empowered to conclude a headquarters agreement with the Kingdom of the Netherlands and to conclude with third units within the meaning of Article 10(4) the necessary confidentiality agreements pursuant to Article 16(6) as well as other agreements in the framework of the rules laid down unanimously by the Council on the basis of this Convention and of Title VI of the Treaty on European Union.

Article 24a

Organs of Europol

The organs of Europol shall be:

1. the Management Board,
2. the Director,
3. the Financial Controller,
4. the Financial Committee.

Article 25

Management Board

- (1) Europol shall have a Management Board. The Management Board:
1. shall assist with the extension of Europol's objectives (Article 2);
 - 1a. shall define liaison officers' rights and obligations towards Europol (Article 5);
 - 1b. shall decide on the number of liaison officers (Article 5)
 2. shall assist in issuing the rules governing data files (Article 10);
 - 2a. shall assist with the adoption of rules governing Europol's relations with third units within the meaning of Article 10(4) (Articles 10, 16 and 39);
 3. shall assist in issuing orders opening data files (Article 11);
 - 3a. may deliver opinions on the reports of the Joint Supervisory Board (Article 22);
 4. shall assist with the appointment and dismissal of the Director and Deputy Directors (Article 26);
 5. shall oversee the proper performance of the Director's duties (Articles 6 and 26);
 6. shall assist with the adoption of staff regulations (Article 27);
 7. shall assist with the preparation of agreements on confidentiality and the adoption of provisions on the protection of secrecy (Articles 16 and 28);
 8. shall assist with the drawing up of the budget, including the establishment plan, the auditing and the discharge to be given to the Director (Articles 32 and 33);
 9. shall approve the five-year financing plan (Article 32);
 10. shall appoint the financial controller and oversee the performance of his duties (Article 32);
 11. shall assist with the adoption of the financial regulation (Article 32);
 12. shall assist with the conclusion of a headquarters agreement (Article 34);
 - 13.
 - 13a. (-);
 14. shall assist with any amendment of this Convention (Article 40);

15. shall assume responsibility for any other tasks assigned to it by the Council in legal acts for the implementation of this Convention or otherwise.

(2) The Management Board shall be composed of one representative from each Member State. Each member of the Management Board shall have one vote.

(3) Each member of the Management Board may be represented by an alternate member; in the absence of the full member, the alternate member may exercise his right to vote.

(4) The Commission of the European Communities shall be invited to attend meetings of the Management Board with non voting status. However, the Management Board may decide to meet without the Commission representative.

(5) The members or alternate members shall be entitled to be accompanied and advised by experts from their respective Member States at meetings of the Management Board.

(6) The Management Board shall be chaired by the representative of the Member State holding the Presidency of the Council.

(7) The Management Board shall unanimously adopt its rules procedure.

(8) Save as otherwise provided in this Convention or in the rules or procedure of the Management Board, decisions of the Management Board shall be taken by a two-thirds majority of its members. Abstentions shall not prevent the Management Board from adopting decisions which must be taken unanimously.

(9) The Management Board shall meet at least twice a year.

(10) The Management Board shall adopt each year a general report prepared by the Director, which shall also cover prospects for Europol's development and shall be submitted to the Council in accordance with the procedure laid down in Title VI of the Treaty on European Union.

Article 26

Director

(1) Europol shall be headed by a Director appointed by the Council, acting unanimously in accordance with the procedure laid down in Title VI of the Treaty on European Union after obtaining the opinion of the Management Board, for a four-year period renewable once.

(2) The Director shall be assisted by two Deputy Directors appointed for a period of four years in accordance with the procedure laid down in paragraph 1; a single reappointment is permitted. Their tasks shall be defined in greater detail by the Director.

(3) The Director shall be responsible for:

1. performance of the tasks assigned to Europol;
2. day-to-day administration;
3. personnel management;
4. proper preparation and implementation of the Management Board's decisions;
5. preparing the draft budget, draft establishment plan and draft five-year financing plan and implementing Europol's budget;
6. all other tasks assigned to him in this Convention or by the Management Board.

(4) The Director shall be accountable to the Management Board in respect of the performance of his duties. He shall attend its meetings.

(5) The Director shall be Europol's legal representative.

(6) The Director and the Deputy Directors may be dismissed by a decision of the Council, to be taken in accordance with the procedure laid down in Title VI of the Treaty on European Union by a two-thirds majority of the Member States, after obtaining the opinion of the Management Board.

(7) Notwithstanding paragraph 1 and 2 the first term of office after entry into force of this Convention shall be five years for the Director, four years for his immediate Deputy and three years for the second Deputy Director.

Article 27

Staff

(1) The Director, Deputy Directors and the employees of Europol shall be guided in their actions by the objectives and tasks of Europol and shall not take or seek orders from any government, authority, organization or person outside Europol, save as otherwise provided in this Convention; Title VI of the Treaty on European Union shall be unaffected.

(2) The Director shall be in charge of the Deputy Directors and employees of Europol. He shall engage and dismiss employees (-). In selecting employees, in addition to having regard to personal suitability and professional qualifications, he shall ensure that adequate regard is paid to nationals of all Member States [and to the official languages of the European Union].

(3) Detailed arrangements shall be laid down in staff regulations which the Council shall, after obtaining the opinion of the Management Board, adopt unanimously in accordance with the procedure laid down in Title VI of the Treaty on European Union.

Article 28

Secrecy

(1) Europol and the Member States shall take appropriate measures to protect information subject to the requirement of confidentiality (-) which is produced or exchanged with Europol on the basis of this Convention. To this end the Council and the representatives of the Member States meeting within the Council shall unanimously adopt a corresponding provision on secrecy once this has been prepared by the Management Board and submitted to the Council in accordance with the procedure laid down in Title VI of the Treaty on European Union.

(2) Where Europol is to entrust persons with a sensitive activity, Member States shall undertake to have the national authorities responsible for security screening carry out, at the request of the Director of Europol, security screening of their own nationals in accordance with their national (-) provisions and to provide each other with mutual assistance for the purpose. If the person concerned is not a national of a Member State, responsibility shall lie with the Member State on whose territory the person has his domicile or normal place of residence. The authority responsible for security screening under national provisions shall inform Europol only of the results of the security screening, which shall be binding on Europol.

(3) Each Member State and Europol may only entrust those persons, who have had special training and undergone security screening with data processing at Europol.

Article 29

Obligation of discretion and secrecy

(1) Members of Europol organs and the Deputy Directors and employees of Europol shall refrain from any unjustified action and, in particular, any unjustified expression of opinion, (-) which might reflect unfavourably on Europol or their office.

(2) Members of Europol organs and the Deputy Directors, and employees of Europol as well as any other person under a particular obligation of discretion or secrecy shall be bound not to disclose any facts or information which come to their knowledge in the performance of their duties or the exercise of their duties to any unauthorized person or to the public. This shall not apply to facts or information (-) too insignificant to require confidentiality. The obligation of discretion and secrecy shall apply even after leaving office or employment, or after termination of activities. The particular obligation laid down in the first sentence shall be contracted by Europol, with a warning being given of the criminal consequences of any infringement; a written record shall be drawn up of the obligation thus entered into.

(3) Members of Europol organs and the Deputy Directors and employees of Europol as well as persons under a particular obligation of discretion or secrecy in accordance with paragraph 2, may not give evidence either in or outside court or make any statements on any facts or information which come to their knowledge in the performance of their duties or the exercise of their activities, without permission. This obligation shall apply even after leaving office or employment or after termination of activities. Permission shall be granted by the Director. As regards the Director or the members of the Management Board, permission shall be granted by the Management Board. If the possibility exists that the evidence may extend to information and knowledge which a Member State has communicated to Europol, the person, who is responsible for granting permission, shall obtain prior to such granting of permission the consent of the Member State to that evidence being given. Permission and consent of the Member State may be refused only insofar as this is necessary to protect overriding interests of Europol or of a Member State that need protection, and the refusal cannot lead to criminal proceedings being taken against the person obliged to maintain silence.

(4) Each Member State shall treat any infringement of the obligation of discretion or secrecy laid down in paragraphs 2 and 3 as an offence against its legal provisions on official or professional secrets or its provisions for the protection of confidential material; in so doing, it shall treat the offence as falling, both as to merits and as to jurisdiction, within the scope of its legal provisions on official or professional secrets or its provisions for the protection of confidential material. The authorities that are competent under the relevant national law shall decide on the prosecution of anyone within the jurisdiction of the relevant Member State who commits such an offence under national law. A decision on the matter is only admissible if a request is made. Those who are entitled to make requests are Europol, any Member State concerned or, insofar as the infringement of private interests is concerned also the person concerned.

(5) Each Member State shall, no later than the date of entry into force of this Convention, adopt under its national law the legal provisions within the meaning of paragraph 4 necessary for the prosecution of infringements of the obligation of discretion or secrecy laid down in paragraphs 2 and 3. It shall at the same time ensure that the legal provisions also apply to any of its officials who come in contact with Europol in the context of their duties.

Article 30

Working languages

- (1) Reports and all other papers and documentation placed before the Management Board shall be submitted in all official languages of the European Union; the working languages of the Management Board shall be the official languages of the European Union.
- (2) The working languages for Europol's other internal purposes shall be English, French and German, each with equal status.
- (3) The language of the index system pursuant to Article 10a and of the other data files pursuant to Article 10, as well as of the data held in them, shall be English. The same holds true for calling up the information system by Europol.
- (4) The translations required for Europol's work will be provided by the translation centre for the agencies of the European Union.

Article 31

Informing the European Parliament

- (1) The Presidency of the Council shall forward a report annually to the European Parliament on the work performed by Europol.
- (2) The Presidency of the Council shall consult the European Parliament on the principal aspects of Europol's activities, in particular giving the European Parliament the opportunity to express an opinion before important decisions are taken on the implementation of this Convention and before decisions are taken to amend it. The Presidency shall ensure that recommendations of the European Parliament are duly taken into consideration.
- (3) The Director of Europol shall make a statement within a month to the Presidency of the Council on questions by the European Parliament to the Council regarding Europol's work. It shall be the responsibility of the Presidency of the Council to answer the European Parliament's questions.
- (4) Where the European Parliament is discussing matters connected with this Convention, the representative of the Council present at the sittings may also be assisted by the Director, the Deputy Directors and employees of Europol.
- (5) In the context of informing the European Parliament, the Presidency of the Council or the representative appointed by the Presidency shall take account of the requirements of discretion and secrecy.
- (6) This shall be without prejudice to the rights of national Parliaments, Article K.6 of the Treaty on European Union and the general principles applicable to relations with the European Parliament under Title VI of the Treaty on European Union.

Article 32

Budget

(1) Estimates shall be drawn up of all of Europol's revenue and expenditure including all costs of the joint supervisory body and of the secretariat set up by it under Article 22 for each financial year and these items entered in the budget; an establishment plan shall be appended to the budget. The financial year shall begin on 1 January and end on 31 December.

The revenue and expenditure shown in the budget shall be in balance.

A five-year financing plan shall be drawn up together with the budget.

(2) The budget shall be financed from Member States' contributions and from any other revenue accruing to Europol. Each Member State's contribution shall be determined according to the proportion of its gross national product to the sum total of the gross national products of the Member States for the year preceding the year in which the budget is drawn up. For the purposes of this paragraph, "gross national product" shall mean gross national product as determined in accordance with Council Directive 89/130/EEC of 13 February 1989 on the harmonization of the compilation of gross national product at market prices or with any amending or superseding European Union legislation.

(3) By 31 March each year at the latest, the Director shall draw up the draft budget and draft establishment plan for the following financial year and shall submit them, after examination by the Europol Financial Committee, to the Management Board together with the draft five-year financing plan.

(4) The Management Board shall take a decision on the financing plan. It shall act by a majority of two-thirds of the votes of the Member States, subject to the condition that the contributions as determined in accordance with paragraph 2 for the following financial year of those Member States which are in favour, must also represent at least two-thirds of the total budget.

(5) After obtaining the opinion of the Management Board, the Council shall, in accordance with the procedure laid down in Title VI of the Treaty on European Union, adopt Europol's budget by 30 June of the year preceding the financial year at the latest. It shall act by a majority of two-thirds of the votes of the Member States, subject to the condition that the contributions as determined in accordance with paragraph 2 for the following financial year of those Member States which are in favour must also represent at least two-thirds of the total budget. The same shall apply *mutatis mutandis* in the case of any supplementary or amending budget. The adoption of the budget by the Council shall entail the obligation for each Member State to make available promptly the contributions due from it.

(6) The Director shall implement the budget in accordance with the financial regulation.

(7) Monitoring of the commitment and disbursement of expenditure and of the establishment and recovery of revenue shall be carried out by a financial controller, who shall be appointed by the Management Board, acting unanimously, and shall be accountable to it. The financial regulation may make provision for ex-post monitoring in the case of certain items of revenue or expenditure.

(8) The Financial Committee shall be composed of one budgetary representative from each Member State. Its task shall be to prepare for discussions on budgetary and financial matters.

(9) The Council shall, in accordance with the procedure laid down in Title VI of the Treaty on European Union and acting by the majority provided for in paragraph 5, adopt the financial regulation, specifying in particular the detailed rules for drawing up, amending and implementing the budget and for monitoring its implementation as well as for the manner of payment of contributions by the Member States.

Article 33

Auditing

(1) The accounts in respect of all revenue and expenditure entered in the budget together with the balance sheet showing Europol's assets and liabilities shall be subject to an annual audit in accordance with the financial regulation. For this purpose the Director shall submit a report on the annual accounts by 31 May of the following year at the latest.

(2) [The audit shall be performed free of charge by the Court of Auditors of the European Communities.]

[Alternative:

[The audit shall be carried out by a joint audit committee composed of three auditors from the courts of auditors of the Member States. The term of office of the auditors shall be three years; the Member States shall alternate in alphabetical order such that each auditor is replaced after his Member State has been represented on the audit committee for three years. Notwithstanding the provisions of the second sentence, in the composition of the joint audit committee, once Europol has started to perform its functions, the term of office of the member that, in alphabetical order:

is first, shall be two years,

is second, shall be three years,

is third, shall be four years.

The cost of the audit shall be borne by the relevant Member States.]

(3) [The Court of Auditors][The auditors] shall in accordance with the procedure laid down in Title VI of the Treaty on European Union submit to the Council, an audit report on the annual accounts; prior thereto the Director and Financial Controller shall be given an opportunity to express an opinion on the audit report and the report shall be discussed within the Management Board.

(4) The Director shall provide [the Court of Auditors][the auditors] with all information and every assistance which [it][they] require[s] in order to perform [its][their] task.

(5) A decision on the discharge to be given to the Director in respect of budget implementation for the financial year in question shall be taken by the Council, after examination of the report on the annual accounts. (-)

(6) Detailed rules shall be laid down in the financial regulation.

Article 34

Headquarters Agreement

The necessary arrangements concerning the accommodation to be provided for Europol in the headquarters State and the facilities to be made available by that State shall be laid down in a headquarters agreement between Europol and the Kingdom of the Netherlands to be concluded after obtaining the unanimous approval of the Management Board.

Title VI
Liability and legal protection

Article 35

Liability for unauthorized or incorrect data processing

- (1) If someone suffers damage as a result of unauthorized or incorrect computerized processing of his personal data at Europol under the terms of this Convention, Europol shall be bound to make good the damage caused, irrespective of whether it was at fault. In the case of a serious infringement of personal rights, the person concerned shall also receive appropriate financial compensation for damage to interests not connected with property.
- (2) Claims under paragraph 1 shall be limited to a total amount of ECU 100 000. If, as a result of the same incident, several persons are to be paid compensation totalling more than the maximum amount of ECU 100 000, the individual compensation payments shall be reduced according to the ratio of the total amount to the maximum amount.
- (3) If the injured party is in part to blame for causing the damage, the duty to pay compensation and the amount to be paid shall depend on the circumstances, in particular the extent to which either party was chiefly to blame for the injury.
- (4) Claims under paragraph 1 shall become time-barred three years from the date on which the person concerned was apprised of the damage and of (-) duty to pay compensation and, irrespective of whether they were apprised or not, thirty years from the time the act was committed.
- (5) (-)
- (6) If Europol is obliged to make good damage and the damage was caused by the communicating Member State because that State communicated incorrect data (-) or because the communication (-) was unauthorized, the communicating Member State shall be bound to compensate Europol.

(7) If a Member State is bound under its law to make good damage suffered in that Member State by a person as a result of utilization of data held by Europol where the damage was caused by another Member State or by Europol because incorrect data were communicated or the communication was unauthorized, the latter shall be bound to compensate the Member State held liable.

Article 36

Other liability

(1) Europol's contractual liability shall be governed by the law applicable to the contract in question.

(2) In the case of non-contractual liability, Europol shall be obliged, independently of any liability under Article 35, to make good any damage caused through the fault of its organs, of its Deputy Directors or of its employees in the performance of their duties, insofar as it may be imputed to them. Other claims for damages on the basis of the law of the Member States are not ruled out hereby, if they correspond to the general principles of the laws of the Member States.

(3) Against Europol, the person concerned has a right for an action to be stopped or revoked in accordance with the general principles common to the legal systems of the Member States.

Article 37

Jurisdiction

(1) Differences of opinion between Member States or between Member States and Europol on the application of this Convention shall be discussed in the Council using the procedure set out in Title VI of the Treaty on European Union with the aim of finding a settlement. If there is a difference of opinion between the Member States and Europol, Europol shall be granted the opportunity to state its position; in other cases the Council may obtain a statement of position from Europol (-).

(2) Anyone may bring proceedings for infringement of his rights under Articles 17, 18, 20 or 36 or other provisions of this Convention for the protection of the rights of individuals in the court competent under national law for the seat of the national unit (-) in the Member State in which the person concerned usually resides or of which he is a national, or in the court competent under national law for the seat of Europol [Alternative: ... may bring proceedings ... in the court competent under national law for the seat of the national unit of any Member State]. The opposing party in the proceedings shall be Europol; if, in order to enforce a right under this Convention, the collaboration of Member States is required, those Member States shall be parties to the proceedings with the consequence that the decision shall also apply to them. Before proceedings are brought the infringement shall be raised with the Director of Europol. If the Director has not taken a decision remedying the situation within three months of the date on which the matter was brought before him, proceedings may be brought directly. The Member States shall enforce incontestable decisions of the courts of the Member States. This shall be without prejudice to the rules of the Convention of the Member States of the European Economic Community of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters. Each Member State shall designate the courts competent under its national law at the seat of its national unit as the courts competent in national matters, insofar as this is permissible under the Convention referred to in the sixth sentence.

(3) Where proceedings involving the same claim between the same parties or proceedings which are related to each other are brought, Articles 21 and 22 of the Convention of the

Member States of the European Economic Community of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters shall be applied as appropriate. Europol shall inform the national units of the Member States of the introduction and result of each set of proceedings.

(4) If a question of interpretation of this Convention is put to a Court (–) of a Member State in proceedings under paragraph 2 and that court (–) considers a ruling on the question to be necessary for issuing a decision, it may refer the question to the Court of Justice of the European Communities for a preliminary ruling. If such a question is put in proceedings pending before the court (–) of a Member State against whose decisions there is no longer any appeal under national law, that court (–) shall be bound to make application to the Court of Justice.

(5) Any dispute arising from the application of the Staff Regulations or the implementation of employment contracts shall be governed by the Staff Regulations. The Staff Regulations may lay down that the Court of Justice of the European Communities shall have jurisdiction in disputes.

(6) The Court of Justice of the European Communities shall have jurisdiction in proceedings against Europol for refusal of permission under Article 29(3). The relevant grounds for refusal of permission shall be stated in the proceedings, unless the purpose of the refusal of permission would thereby be prejudiced. A Member State that has refused its consent under Article 29(3) shall be party to the proceedings, with the consequence that the decision shall also apply to it.

[Alternative:

Actions for refusal of permission under Article 29(3) shall be brought for a ruling before the Court in the Member State in which the deposition is to be made, or in which Europol has its seat, that has jurisdiction under national law for such type of disputes. The opposing party in the proceedings shall be Europol. The relevant grounds for refusal of permission shall be stated in the proceedings, unless the purpose of the refusal of permission would thereby be

prejudiced. A Member State that has refused its consent under Article 29(3) shall be party to the proceedings, with the consequence that the decision shall also apply to it.

(7) Save as otherwise provided in this Convention, the Protocol on the Statute of the Court of Justice of the European Communities and the Rules of Procedure of the Court of Justice of the European Communities shall also apply to proceedings brought under this Convention; Articles 37 and 39 of this Protocol shall apply only to the Member States.

Article 38

Privileges and immunities

(1) Europol, the members of its organs and the Deputy Directors and employees of Europol shall enjoy the privileges and immunities necessary for the performance of their tasks in accordance with a Protocol setting out the rules to be applied in all Member States and the particular rules to be applied in the headquarters State, including the rules for family members. This Protocol shall be agreed upon by the Council, acting unanimously in accordance with the procedure laid down in Title VI of the Treaty on European Union and shall be adopted by the Member States in accordance with their respective constitutional requirements.

(2) The Kingdom of the Netherlands and the other Member States agree in the same terms that liaison officers seconded from the other Member States shall enjoy those privileges and immunities, which are required for the proper performance of the tasks of the liaison officers in the State where Europol has its headquarters. The rules of the Protocol referred to in paragraph 1 shall be taken into consideration.

Title VII
Final provisions

Article 39

Relations with third units

(1) Insofar as is relevant for the performance of its tasks, Europol shall establish and maintain (-) co-operation relations with third units within the meaning of Article 10(4), points (1) to (3). (-) The Management Board shall unanimously draw up rules governing such relations. Article 10(4) and (5) and Article 16(3) shall be unaffected; exchanges of personal data shall take place only in accordance with the provisions of Titles II to IV of this Convention.

(2) Insofar as is required for the performance of its tasks, Europol may also establish and maintain relations with third units within the meaning of Article 10(4), points (4) to (7). (-) Europol should as a matter of priority establish such relations with the competent bodies of those States with which the European Communities and their Member States have concluded Europe Agreements. The Council shall, having obtained the opinion of the Management Board, unanimously draw up rules governing the relations referred to in the first and second sentences in accordance with the procedure laid down in Title VI of the Treaty on European Union. The third sentence of paragraph 1 shall apply mutatis mutandis.

Article 40

Amendment of the Convention

- (1) In accordance with the procedure laid down in Title VI of the Treaty on European Union, the Council, acting on a proposal from a Member State and, after consulting the Management Board, shall unanimously decide, within the framework of Article K.1(9) of the Treaty on European Union, on any amendments to this Convention which it shall recommend to the Member States for adoption in accordance with their respective constitutional requirements.
- (2) The amendments shall enter into force in accordance with Article 42(2) of this Convention.
- (3) The Secretary-General of the Council of the European Union shall notify all Member States of the date of entry into force of the amendments.

Article 41

Reservations

(-)

Reservations shall not be permissible in respect of this Convention.

Article 42

Entry into force of the Convention

(1) This Convention shall be subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the General Secretariat of the Council of the European Union, which shall notify all Member States of their deposit (-).

(2) This Convention shall enter into force on the first day of the third month following the deposit of the last instrument of ratification, acceptance or approval.

(3) The Secretary-General of the Council of the European Union shall notify all Member States of the date of entry into force.

(4) Notwithstanding paragraph 2, Europol shall not take up its activities under this Convention until the last of the legal acts provided for in Articles 5(7), 10(1), 27(3), 28(1), 32(9), 34 and 38(1) enters into force.

(5) When Europol takes up its activities, the activities of the Europol Drugs Unit under the Ministerial Agreement setting up the Europol Drugs Unit of 2 June 1993 shall come to an end. At the same time, all equipment financed from the Europol Drugs Unit joint budget, developed or produced by the Europol Drugs Unit or placed at its disposal free of charge by the headquarters State for its permanent use, together with that Unit's entire archives and independently administered data files shall become the property of Europol.

(6) Once the Convention has been signed, Member States, acting either individually or in common, shall take all preparatory measures under their national law which are relevant to the commencement of Europol activities.

Article 42a

Territorial scope of the Convention

(1) As regards the Kingdom of Denmark, the provisions of this Convention shall not apply to the Faroe Islands or to Greenland, unless the Kingdom of Denmark makes a declaration to the contrary. Such a declaration can be made at any time by notifying the Secretary-General of the Council of the European Union, who shall inform the Governments of the other Member States.

(2) As regards the Kingdom of the Netherlands, the provisions of this Convention shall apply only to the European territory of the Kingdom of the Netherlands.

Article 43

Accession to the Convention

(1) Accession to this Convention shall be open to any State becoming a Member State of the European Union. Instruments of accession shall be deposited with the Secretary-General of the Council of the European Union.

(2) This Convention shall enter into force for any State acceding to it on the first day of the third month following the deposit of the instrument of accession.

(3) The Secretary-General of the Council of the European Union shall notify all Member States of the date of entry into force.

IN WITNESS WHEREOF the undersigned Plenipotentiaries have signed this Convention.

DONE at , this day of in the year , in a single original in the Danish, Dutch, English, French, German, Greek, Irish, Italian, Portuguese and Spanish languages, each text being equally authentic; it shall be deposited with the Secretary-General of the Council of the European Union, which shall transmit a certified copy to each of the Member States.

Annex (List of other forms of crime which could be transferred to Europol to deal with under 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.