



23 February 1999

A4-0064/99

## PROPOSAL FOR A RECOMMENDATION

on Europol: reinforcing parliamentary controls and extending powers

Committee on Civil Liberties and Internal Affairs

Rapporteur: Hartmut Nassauer

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PE 229.270/fin.

· Consultation procedure  
simple majority  
\*\*I Cooperation procedure (first reading)  
simple majority  
\*\*\*I Cooperation procedure (second reading)  
simple majority to approve the common position  
majority of Parliament's component Members to reject or amend the common position  
\*\*\* Assent procedure  
majority of Parliament's component Members to give assent  
but simple majority under Articles 8a, 105, 106, 130d and 228 EC

\*\*\*I Codecision procedure (first reading)  
simple majority  
\*\*\*II Codecision procedure (second reading)  
simple majority to approve the common position  
majority of Parliament's component Members to adopt a declaration of intended  
rejection of the common position, and amend the common position or confirm its rejection  
\*\*\*III Codecision procedure (third reading)  
simple majority to approve the joint text  
majority of Parliament's component Members to reject the Council text

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By letter of 8 October 1998 the Committee on Civil Liberties and Internal Affairs asked the President under Rule 94(1), second subparagraph, for authorisation to draw up a recommendation on the role, powers and parliamentary supervision of Europol.

At the sitting of 20 November 1998 the President announced that the Conference of Presidents had granted authorisation.

At its meetings of 25 January and 17 February 1999 the committee considered the proposal for a recommendation drawn up by Mr Nassauer and adopted it by 13 votes to 4, with 0 abstentions.

The following were present for the vote: d'Ancona, chairman; Wiebenga, vice-chairman; Nassauer, rapporteur; Bontempi, Cederschiöld, Ceyhun, Gomolka (for Deprez), Hernandes (for Posselt), Matikainen (for Colombo Svevo), Mendes Bota, Pirker, Pradier, Stewart-Clark, Terrón i Cusí, Voggenhuber (for Orlando), Wilson (for Schulz) and Zimmermann.

The proposal for a recommendation was tabled on 23 February 1999.

The deadline for tabling amendments will be indicated in the draft agenda for the relevant part-session.

## PROPOSAL FOR A RECOMMENDATION

### European Parliament recommendation to the Council on Europol: reinforcing the role of Parliament and extending powers

#### The European Parliament,

- having regard to Rule 94 of its Rules of Procedure,
- having regard to Article K.6, third subparagraph, of the EU Treaty,
- having regard to Article K.1(9), Article K.3, second subparagraph, and Article K.6, second subparagraph, of the EU Treaty,
- having regard to Article K.1, Article K.2, subparagraphs 1(b) and 2, Article K.13 and Article K.14 of the Amsterdam Treaty,
- having regard to the Council Act of 26 July 1995 drawing up the Convention based on Article K.3 of the Treaty on European Union, on the establishment of a European Police Office (Europol Convention)<sup>(1)</sup>,
- having regard to the Protocol, drawn up on the basis of Article K.3 of the Treaty on European Union and Article 41(3) of the Europol Convention, on the privileges and immunities of Europol, the members of its organs, the Deputy Directors and employees of Europol<sup>(2)</sup>,
- having regard to its resolutions of 22 January 1993 on the setting up of Europol<sup>(3)</sup>, 19 May 1995 on the Europol Convention<sup>(4)</sup>, 14 March 1996 on Europol<sup>(5)</sup> and 16 September 1998 on Europol<sup>(6)</sup>,
- having regard to the joint actions of 10 March 1995<sup>(7)</sup> and 16 December 1996<sup>(8)</sup> on the Europol Drugs Unit,
- having regard to Europol's programme of work for 1999,
- having regard to the draft Europol budget for 1999<sup>(9)</sup>,

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<sup>(1)</sup> OJ C 316, 27 November 1995, p. 1.

<sup>(2)</sup> OJ C 221, 19 July 1997, p. 2.

<sup>(3)</sup> OJ C 42, 15 February 1993, p. 250.

<sup>(4)</sup> OJ C 151, 19 June 1995, p. 376.

<sup>(5)</sup> OJ C 96, 1 April 1996, p. 228.

<sup>(6)</sup> Minutes of the sitting of 16 September 1998.

<sup>(7)</sup> OJ L 62, 20 March 1995, p. 1.

<sup>(8)</sup> OJ L 342, 31 December 1996, p. 4.

<sup>(9)</sup> 7369/1/98 REV 1.

- having regard to the decisions of the Council of Justice and Home Affairs Ministers of 3 and 4 December 1998,
  - having regard to the Commission Communication of 14 July 1998 'Towards an Area of Freedom, Security and Justice'<sup>(1)</sup>.
  - having regard to the proposal for a recommendation of the Committee on Civil Liberties and Internal Affairs (A4-0064/99),
- A. whereas the setting up of the European Police Office (Europol) is a necessary step in the fight against organised crime in the European Union,
- B. whereas the exercise of police powers in a constitutional democracy must be subject to parliamentary controls and, accordingly, the legal bases must be laid down in legislation by a directly elected parliament and the persons involved must be accountable to parliament so that the powers are exercised with the consent of the communities which the police serve,
- C. whereas, in accordance with the Europol Convention, parliamentary supervision of Europol by the European Parliament is limited to the forwarding by the Council Presidency of an annual special report on Europol's activities, and to consultation in the case of amendments to the Europol Convention,
- D. whereas, in addition, pursuant to Article K.6 of the Maastricht Treaty, the European Parliament is to be kept regularly informed and to be consulted on the principal aspects of activities in these fields, and its views are to be duly taken into consideration,
- E. convinced that, whilst the European Parliament's right to be kept informed and to be consulted does give it a measure of influence, it does not guarantee parliamentary supervision of Europol with regard to legal bases and the personal accountability of the persons involved,
- F. whereas the provision of information to the European Parliament does not have to be confined to the annual special report specified in Article 34 of the Europol Convention, as the first paragraph of Article K.6 of the Maastricht Treaty stipulates that the European Parliament is to be kept regularly informed,
- G. whereas the exercise of officially sanctioned powers by Europol under the present system is limited to processing personal data using automated information systems,
- H. whereas the proper performance of the Director's duties is overseen by the Management Board, which thus exercises technical and legal supervision of Europol,
- I. whereas the Management Board is made up of one representative from each Member State and each member of the Management Board has one vote,

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<sup>(1)</sup> COM(98)0459 final.

- J. whereas the actions of the members of the Management Board form part of the respective national chains of democratic legitimacy and are thus subject to the directions of and answerable to the Management Board member responsible,
- K. whereas the Council members responsible for the Management Board are subject to national parliamentary controls in accordance with the provisions of their respective constitutions,
- L. whereas the freedom from orders referred to in Article 30(1) of the Europol Convention only frees the Director and employees of Europol from the obligation to take orders from governments, authorities, organisations or persons outside Europol,
- M. whereas the absence of answerability thus arising does not apply in the relationship between the Management Board and Europol or in that of the Member States to the Management Board members they appoint,
- N. whereas the legal bases for data processing within Europol are laid down in Titles II, III and IV of the Europol Convention and in the implementing rules pursuant to Article 10(1) of the Europol Convention, and whereas the adoption of such provisions was subject to controls by the Member State parliaments in the usual manner of international agreements,
- O. whereas the parliaments of the Member States exercise controls over the detailed supervision of data processing in that they can influence the activities of national supervisory bodies in accordance with their respective national laws,
- P. whereas, although data processing at Europol level is subject to the supervision of the independent joint supervisory body, the Member State parliaments can nevertheless only exercise control through the activity report of the joint supervisory body, which must be delivered to the Council, or the activity report of the Management Board,
- Q. whereas parliamentary control by the Member State parliaments is too cumbersome and ineffective as a result of intergovernmental mechanisms, and the supplying of information to the European Parliament cannot be regarded as an adequate form of parliamentary control,
- R. whereas the European Parliament's power of parliamentary supervision could be strengthened considerably if Europol's budget were to be incorporated into the Community budget,
- S. whereas Europol's new powers based on the supporting coordination of police deployment made possible by the Amsterdam Treaty do not fundamentally alter the system or the imperatives of parliamentary control,
- T. whereas the processing of data, which is particularly in need of supervision, has not been changed by the Amsterdam Treaty,
- U. convinced that consideration should be given, with due regard to the principle of subsidiarity, to the further development of Europol into a European police unit with operational powers as a response to the spread of cross-border organised crime,

- V. whereas the responsibility for coordinating cross-border inquiries should accordingly be transferred to Europol in the framework of its tasks, with the accompanying right to issue directives to national police authorities, but without executive powers,
- W. whereas operational powers of this kind are no longer adequately covered by the controls exercised by the Member State parliaments and more effective parliamentary scrutiny at intergovernmental level is not possible,
- X. convinced that a European police office whose activities effectively encroach on citizens' legally protected rights, and in particular one which is empowered to issue directives to national police authorities, can no longer be organised at intergovernmental level, but must be placed on a basis of Community law so as to give the European Parliament the power of direct parliamentary supervision,
- Y. convinced that a European police office based on Community law should, in order to ensure effective constitutional and parliamentary scrutiny and transparency, be placed under the direction and supervision of a member of the European Commission, who in his turn is fully answerable to the European Parliament,
- Z. convinced that the closely delimited and precisely defined relinquishment of national sovereignty which goes hand in hand with a European police office based on Community law is justified, not least in the interests of citizens, in view of the real opportunities it affords for combatting organised crime,
- AA. convinced that a European police office with operational powers should, with regard to its activities in the field of criminal investigations, be subordinate in some form to a European public prosecutor's office which would decide whether or not the outcome of cross-border investigations warranted the institution of legal proceedings,

1. Puts to the Council the following recommendations:

(Recommendation 1)

Calls on the Council, in the context of the next IGC, to incorporate in the Treaty provisions on full parliamentary and judicial scrutiny of Europol at the European level;

(Recommendation 2)

Urges the Council once again, in the context of Europol, to take account of the European Parliament's right to be informed and consulted in accordance with Article K.6 of the Treaty on European Union, and to hear accordingly the views of the European Parliament on the following matters and take due account of its opinions:

- decision to instruct Europol to deal with terrorist activities before the expiry of the prescribed period in accordance with Article 2(2) of the Europol Convention,
- decision to assign responsibility to Europol for dealing with other forms of crime detailed in the Annex to the Europol Convention,
- implementing rules regarding data in accordance with Article 10(1)(3) of the Europol Convention,
- rules to be observed by Europol in accordance with Article 10(4), final sentence, of the Europol Convention,
- general rules for the communication of personal data by Europol pursuant to Article 18(2) of the Europol Convention,
- activity reports by the joint supervisory body pursuant to Article 24(6) of the Europol Convention,
- rules on the agreements to be reached by Europol pursuant to Article 28(3) of the Europol Convention,
- Council decision on the dismissal of the Director and the Deputy Directors pursuant to Article 29(6) of the Europol Convention,
- staff regulations in accordance with Article 30(3) of the Europol Convention,
- rules on confidentiality in accordance with Article 31(1) of the Europol Convention,
- budget planning in accordance with Article 35(5) of the Europol Convention,
- financial regulation in accordance with Article 35(9) of the Europol Convention,
- audit report pursuant to Article 36(3) of the Europol Convention,
- decision on the discharge in accordance with Article 36(5) of the Europol Convention,
- disputes between Member States on the interpretation or application of the Convention in accordance with Article 40(1) of the Europol Convention,
- Protocol on privileges and immunities pursuant to Article 41 of the Europol Convention,
- amendment of the Convention pursuant to Article 43(1) of the Europol Convention,
- decision regarding the definitions of forms of crime contained in the Annex pursuant to Article 43(3) of the Europol Convention,
- report by the Management Board in accordance with Article 28(10) of the Europol Convention,
- appointment of the Director and Deputy Directors pursuant to Article 29 of the Europol Convention;

(Recommendation 3)

Regrets that the Council, when adopting the legal acts and decisions published in Official Journal C 26 of 30 January 1999, neither consulted the European Parliament and took due account of its views pursuant to Article K.6 of the TEU nor kept it informed;

(Recommendation 4)

Calls on the Council to adopt a decision incorporating Europol's budget in the Community budget and, together with the European Parliament and on the basis of relevant proposals by the Commission, to take the necessary budgetary decisions;

(Recommendation 5)

Calls on the Parliaments of the Member States to take consistent account of their right and duty to supervise the actions of the Council members responsible for Europol and the representatives appointed to the Europol Management Board in the framework of the provisions of their constitutions, cooperating closely with the European Parliament in so doing;

(Recommendation 6)

Calls on the Council not only to forward the annual special report to the European Parliament but also to keep it informed regularly, i.e. at least quarterly, of Europol's activities;

(Recommendation 7)

Recommends to the Member State Parliaments that they ensure that they receive regular reports on the activities of their national supervisory bodies in accordance with Article 23 of the Europol Convention and that they engage in an exchange of views on this subject with the European Parliament;

(Recommendation 8)

Calls on the Council, with the aim of protecting the privacy of members of the public, to ensure that the networks of national data inspectorates which meet at European level meet in such a way that there is no risk of sensitive information being leaked;

(Recommendation 9)

Calls on the Council to investigate whether a smaller but permanent (as opposed to the current temporary) data inspectorate should be established as Europol's remit is extended;

(Recommendation 10)

Recommends to the Member State Parliaments that they examine the annual reports of the Management Board pursuant to Article 28(10) of the Europol Convention and the reports of the national supervisory bodies with a view to ascertaining any necessity for amendments to the relevant provisions of the Europol Convention, and that they introduce such amendments jointly with the European Parliament;

(Recommendation 11)

Calls on the Council to make use without delay of the possibilities for developing Europol in accordance with the relevant provisions of the Amsterdam Treaty and to consult the European Parliament on the corresponding legislation;

(Recommendation 12)

Calls on the Council to set up without delay a working group whose task is to submit practicable proposals for stepping up intergovernmental cooperation between investigating authorities and, in particular, to give consideration to the formation of multinational teams for cross-border investigations;

(Recommendation 13)

Calls on the Council to examine, with a view to making cross-border crime-fighting more effective, whether responsibility for coordinating cross-border action to fight crime may be transferred to Europol in the framework of its tasks, including the necessary powers vis-à-vis national police authorities, and what legal bases would be needed;

(Recommendation 14)

Calls for the creation of an independent body with authority to investigate any complaints against the police which involve decisions by Europol on the actions of its staff;

(Recommendation 15)

Calls on the Council, in the event of Europol's evolving into a police unit with cross-border operational powers, to look into the setting-up of a European public prosecutor's office or some other judicial body to direct the technical aspects of Europol's investigative activities;

(Recommendation 16)

Calls for Europol, in the event of its developing into a European police unit with cross-border operational powers, to be given a basis in Community law and to be placed under the responsibility and direction of a member of the European Commission as part of this development;

(Recommendation 17)

Calls for a Commissioner to be given responsibility for Europol and to be placed under the parliamentary supervision of the European Parliament;

(Recommendation 18)

Calls on the Council to report to the European Parliament within two years following Europol's becoming operational on the promotion of cooperation through Europol pursuant to Article 30(2) of the Treaty of Amsterdam and on the prospects for conferring further operational powers on Europol;

2. Instructs its President to forward this resolution to the Council and, for information, to the Commission and the governments and parliaments of the Member States.

## **B. Explanatory statement**

### Europol and parliamentary controls

The subject of this recommendation is parliamentary supervision of Europol. Europol is considered for this purpose in its current form based on the Maastricht Treaty and the Europol Convention. Possible changes on the basis of the Amsterdam Treaty are also examined. Finally, the further development of Europol into a police unit with operational and executive powers of action and the implications thereof for parliamentary supervision are considered.

According to the Europol Convention of 26 July 1995 based on Article K.3 of the Treaty on European Union, Europol is a central criminal investigation office. Europol gathers and analyses information. Automated information banks are kept for this purpose. The data is exchanged among the Member States.

The cooperation among the Member States established in this way on the basis of Article K.1(9) of the Treaty on European Union is aimed at combatting particularly serious crimes, especially major forms of international crime, which are individually listed in Article 2 of the Europol Convention. The Council can instruct Europol to deal with other crimes, which are set out in detail in an Annex to Article 2.

Europol is linked to a national unit in each Member State. This is the only liaison body between Europol and the competent authorities in the Member States (Article 4(2) of the Europol Convention). The national units second liaison officers to Europol, who represent the interests of their national units in Europol and are subject to the national law of the seconding Member State (Article 5 of the Europol Convention).

### Activities in need of supervision

Under the present system Europol gathers and analyses information, using automated information systems. Information and links discovered between crimes will be forwarded to the relevant authorities in the Member States via the national bodies.

In accordance with Title II of the Europol Convention data will be fed directly into the information system by the Member States. Europol, on the other hand, is responsible for entering data from third countries and outside bodies, and data which has emerged from its analytical activities.

The content of the information system is laid down in detail in Article 8 of the Europol Convention. The data relates to persons who are suspected of involvement in a criminal offence for which Europol is competent, who have been convicted of such an offence, or who there are serious grounds for believing will commit such an offence.

In the work files under Title III of the Europol Convention personal data will be stored for purposes of analysis (Article 10 of the Europol Convention). Analysis is defined by Europol as the assembly, processing or utilisation of data with the aim of helping a criminal investigation (Article 10(2) of the Europol Convention).

Europol's activities are thus concentrated at present on handling data. This is collected, stored, processed, utilised and analysed, as well as being made available to competent bodies. At national level the respective national data protection rules apply, at Europol level the provisions of Title IV of the Europol Convention. Apart from this Europol has no executive powers. In particular, all other investigative activities and the application of all police measures fall within the powers of the national police authorities.

Police activity needs to be supervised above all in areas where it interferes in citizens' rights, especially fundamental rights. The powers of Europol only fulfil this criterion when it comes to handling personal data. Personal data forms part of the general freedom of the person, which is the subject of general constitutional protection. This aspect of general personal freedom has entered the area of constitutions and constitutional jurisprudence as the right of self-determination in respect of data, and thus comes under the protection of the general principles of the Treaty on European Union.

What is required of parliamentary supervision of Europol's police activities

Parliamentary supervision must first of all ensure that the conditions under which Europol exercises its activities are subject to parliamentary decision-making. Police activities can only take place on a basis of law. The principle of the lawfulness of police activity forms part of the concept of the rule of law. The principle of the rule of law prevents the State from acting in an arbitrary fashion by supervising its powers. This supervision is exercised above all through the fact that the activity of the State is bound by the law, chiefly in the form of the constitution and legislation. Parliaments thus exercise substantial control over the police via legislation by means of a precise definition of the conditions under which police activity is possible in general and, in particular, under which it can interfere in citizens' rights.

The legal bases for the activities of Europol are, firstly, the relevant provisions of the Maastricht, and later the Amsterdam, Treaties, then the Europol Convention and the implementing rules adopted on the basis of that Convention.

Treaties and conventions are by their nature agreements in international law, which are negotiated by the Council and ratified by the national parliaments. As is usual in the case of international-law agreements, the agreements are submitted to the parliaments in the framework of the ratification process with the sole options of acceptance or rejection. The parliaments' possibilities for action are restricted to agreement or rejection; they have no influence over either the details of agreements or the negotiation procedure. The influence of parliaments over agreements in international law is thus less great than their influence over the drafting of an internal law. This reduction in the possibilities for parliamentary guidance is accepted for the sake of international cooperation. Parliamentary control is not exercised here in the same way as it is internally. It is not totally excluded from the proceedings, however. Each parliament taking part in the procedure to adopt an agreement in international law can bring down the whole agreement by declining to ratify it. The legal bases for the activities of Europol thus fulfil the requirements for parliamentary control in the framework of the principle of democracy.

This is true both in respect of the primacy of the law, whereby State activities may not violate the law, and of the principle that State activity may only take place on the basis of a statute. The latter principle states not only that laws must be adopted to regulate the case in particular of police interference in the rights of citizens; the principle also lays down the content of these laws. Legal

authorisation to undertake damaging interventions has to be defined in respect of its content, purpose and extent.

These requirements are also fulfilled in the case of Europol. Europol's activities in connection with personal data qualify as interventions. The conditions under which data may be processed are adequately defined in the Europol Convention and the implementing rules for data files pursuant to Article 10(1) of the Europol Convention. This does not prevent occasional disputes from arising about the scope of the empowering laws.

Parliamentary control of the persons involved applies when the organs or employees of Europol are part of an unbroken chain of legitimation reaching as far as the citizens of the Member State in question. To this extent the chain linking Europol back to the national parliaments is the decisive factor. The organs of Europol are the Management Board, the Director, the Financial Controller and the Financial Committee. Under Article 28(2) of the Europol Convention the Management Board is composed of one representative of each Member State. Under Article 29(1) of the Europol Convention the Director is appointed by the Council acting unanimously. The Director gives legitimation to the Europol employees he appoints. Under Article 35(7) of the Europol Convention the Financial Controller is appointed by the Management Board acting unanimously. The Financial Committee is made up of one representative from each Member State, pursuant to Article 35(8) of the Europol Convention.

It is clear from this that parliamentary supervision of the activities of Europol must begin with the Council, and thus with the Council member representing any given Member State. This was already true at the stage of drawing up the Europol Convention and agreeing on it in the Council; it is true also of the legal acts adopted unanimously or by a majority in the Council, which it is empowered to do by the Europol Convention (cf. the legal acts pursuant to Article 2(2) of the Europol Convention and the other implementing rules on the basis of the Europol Convention, some of which have to be ratified).

The members of the Council are accountable to the national parliaments for all of these legal acts in accordance with the standards of their respective constitutional provisions.

General supervision of Europol is the task of the Management Board (Article 28 of the Europol Convention). The Director, who heads Europol (Article 29(1) of the Europol Convention), is accountable to the Management Board (Article 29(4) of the Europol Convention). The Management Board thus exercises both technical and legal supervision over Europol.

The actions of the national representatives on the Management Board are subject to the instructions of their respective Member States, in practice usually the member of the Council responsible. The freedom of action laid down in Article 30(1) of the Europol Convention for the Director, Deputy Directors and employees of Europol does not apply to the national representatives on the Management Board. Through the supervision of the Council member, therefore, the activities of the Management Board representative and hence the actions of Europol, given the Director's authority to head Europol and his accountability to the Management Board, are subject to the parliamentary supervision of the Member State parliaments.

It must be assumed, on the other hand, that the Director in his capacity as an organ of Europol is not subject to controls by the parliament of a Member State. This would run counter to the freedom of action of the Director. Thus even the parliament of the Member State of which the Director is a

citizen has no particular powers. Incidentally, the Europol Convention does not even lay down that the Director must be a citizen of the Union.

So parliamentary supervision of the activities of Europol is in principle no different from supervision of Council members in general. Europol is an intergovernmental body to which the procedures of intergovernmental parliamentary control cannot be automatically transferred. This can be accepted given the purpose that Europol serves and taking account of its present structure.

#### Parliamentary supervision of the processing of data

Supervision of the handling of personal data is a matter of particular importance. In this respect the activities of Europol assume the character of interference: the processing of data constitutes an interference in the right of self-determination of citizens in respect of data, which in some Member States is a fundamental right.

The requirement of the lawfulness of Europol's activities is fulfilled by the fact that the conditions concerning the handling of data are set out in detail in the Europol Convention.

The extent to which the handling of data can be the subject of 'ex post' parliamentary (rather than judicial) supervision is in need of clarification. Under the Europol Convention data-protection checks are carried out by the national control bodies in accordance with Article 23 of the Europol Convention and by the joint supervisory body in accordance with Article 24. The national supervisory bodies monitor the processing of data in accordance with the relevant national law up to the moment when it is transferred to Europol. They also have access to the data fed into the information system and index system by the Member States. The national supervisory bodies thus form an integral part of the national parliamentary controls in each country.

In accordance with Article 24 of the Europol Convention, the processing of data at Europol level is monitored by the independent joint supervisory body. The latter checks that the data protection provisions of the Europol Convention are observed and checks in particular whether Europol's data processing activities violate the rights of individuals.

If this proves to be the case the joint supervisory body calls on the Director for assistance. The joint supervisory body also draws up activity reports at regular intervals, which are forwarded to the Council.

It follows from this that parliamentary controls of data processing at Europol level must begin with the Director and the Management Board. The Director receives the comments of the joint supervisory body (Article 24 of the Europol Convention), to which he must reply within a set period. The Management Board is kept informed by the Director and also has the task of overseeing the proper performance of the Director's duties (Article 28(1)(12) Europol Convention).

The processing of data by Europol can thus be supervised by the national parliaments via the activity reports made available to the Council by the Management Board.

It should be noted that the possibilities for effective parliamentary controls are furthest from the usual national standards in the case of the processing of personal data at Europol level. In the first instance it is the job of the joint supervisory body to ascertain that a data processing measure is

inadmissible. It can be called upon to do so by the persons concerned. Any observations deemed necessary are sent by the joint supervisory body to the Director. The joint supervisory body can also, pursuant to Article 24(6) of the Europol Convention, report to the Council and, where appropriate, publish its report. General parliamentary controls only start, therefore, at Council level.

The action that the Director takes in response to the observations of the joint supervisory body is one subject of the checks on the proper performance of the Director carried out by the Management Board (Article 28(1)(12) Europol Convention). It is only via the Management Board and, possibly, its report, which must be unanimously adopted, that the conduct deemed to be deserving of criticism is brought to the attention of the Council and hence within the reach of the supervisory powers of the national parliaments. The possibility of their exercising controls, although thus opened up in principle, is made cumbersome by the staggered reporting procedures and very ineffective by the intergovernmental mechanisms.

### The role of the European Parliament

The powers of supervision by the European Parliament vis-à-vis Europol are extremely limited. They amount only to the reception of a special report to be forwarded annually by the Council Presidency (Article 34(1) Europol Convention). The European Parliament is also consulted in the event of the Europol Convention being amended.

If one regards the heart of parliamentary control as being the possibility of making decisions about the legal bases and the exercise of controls over the actions of the persons responsible, then it is clear that the European Parliament is only on the very edge of exercising parliamentary control over Europol. It does not have decision-making powers with regard either to the legal bases or to staff. Even bearing in mind that European Parliament resolutions are gaining more and more in political significance, in the present structure of Europol the right and duty to exercise parliamentary controls over Europol clearly belong to the Member State parliaments.

### Europol and the Amsterdam Treaty

The Amsterdam Treaty leaves the essence of the current structure of Europol unchanged. Europol remains firmly situated in the area of intergovernmental cooperation within the European Union. Europol is not given new operational possibilities, or even executive powers. The Council is simply empowered to allow Europol the possibility of promoting coordination measures. In particular, as already mentioned, nothing is changed as regards Europol's rights as regards the processing of data. Mainly because of this no fundamentally new aspects of parliamentary supervision of Europol have been introduced.

### The further development of Europol

In its resolution of 14 March 1996 on Europol the European Parliament called for a review of the Europol Convention with a view to ascertaining whether Europol should have independent powers of investigation transferred to it. The Amsterdam Treaty did not act upon this call.

A possible next step to be considered in the development of the European Police Office would be to make Europol responsible for the coordination of cross-border investigations in the framework of the list of areas of responsibility contained in Article 2 of the Europol Convention. Europol would

then no longer simply support cross-border international cooperation between police forces by supplying data and information derived from analysis. It would, instead, be the job of Europol itself to draw up cross-border investigation plans and give orders for their implementation. The responsibility for coordination would thus be linked to a right to issue instructions to the national police forces involved in any given investigation. Even then Europol would not need to have executive powers. It would still be the task of the national police forces to carry out policing measures. Europol could, for example, order simultaneous house searches to be carried out in Rome, London and Frankfurt (in each case on the basis of the necessary search warrants issued in accordance with the law of the Member State in question). The searches themselves would be the job of the national police forces, which would be subject in their actions to national law and would be accountable accordingly. This would not involve anything out of the ordinary as far as parliamentary supervision of the activities of national police forces was concerned.

Europol as the central coordinating unit for cross-border police operations raises questions of two kinds. On the one hand, police investigations in the European legal area do not, as far as their beginning and their end are concerned, tend to be ordered by the police acting independently. The issuing of instructions concerning the beginning and the conclusion of investigations is usually a matter for, for example, independent judicial bodies, public prosecutors' offices or investigating judges who are empowered to issue instructions at least to the police.

The decision about the launching of cross-border investigations, responsibility for which cannot be given to a competent national judicial authority because of the cross-border nature of the investigations, cannot be left to Europol, any more than the decision to end an investigation can. From the point of view of constitutional democracy, therefore, it will become necessary to establish a European judicial authority - a European public prosecutor's office, for example -, which would be empowered to issue orders to Europol in the framework of its investigative powers. A European public prosecutor's office would go beyond the scope of the cooperation that is possible at intergovernmental level. It would have to be organised supranationally and thus be part of the European Community. The European public prosecutor's office would have to take orders from a member of the European Commission, who would in turn have to be fully answerable to the European Parliament.

In this way the idea underlying the current chain of command - that Europol should be kept free from all national influence - would be preserved, since the European Commission also has a duty to serve only the interests of the Community.

From all of this it is clear that parliamentary supervision of Europol under the present system and structure, whereby it is a central criminal investigation body founded on an intergovernmental legal basis, equipped above all with the right to process personal data, must remain in the hands of the national parliaments of the Member States and that it can be adequately exercised there. The attribution of cross-border operational powers such as the responsibility for coordinating cross-border police operations must, on the other hand, for reasons *inter alia* of constitutional democracy, be taken out of the intergovernmental context and moved in the direction of a Community solution to the problem, with a European public prosecutor's office, which must, in a framework of a democratic chain of legitimation and hence with the possibility of parliamentary controls, be attached to the Commission, which would for its part be answerable to the European Parliament. Significant developments in Europol are thus linked to the further development of the European treaties in the direction of integration.