EUROPEAN UNION
THE COUNCIL

Brussels, 29 May 1995

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LIMITE

EUROPOL 54

N O T E

Subject: Convention based on Article K.3 of the Treaty on European Union, on the establishment of a European Police Office (Europol)

Delegations will find attached the above text, as finalized by the Legal/Linguistic Experts' Working Party.

COUNCIL ACT

of .....

establishing the Convention

based on 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, within the framework of the cooperation provided for in Title VI of the Treaty;

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

ANNEX

CONVENTION
BASED ON ARTICLE K.3 OF THE TREATY ON EUROPEAN UNION,
ON THE ESTABLISHMENT OF A EUROPEAN POLICE OFFICE
(EUROPOL)

THE HIGH CONTRACTING PARTIES to the present Convention, Member States of the European Union,

REFERRING to the Council act of ...

AWARE of 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 cooperation 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,

IN VIEW of the decision of the European Council of 29 October 1993 that Europol should be established in the Netherlands and have its seat in The Hague,

MINDFUL of the common objective of improving police cooperation 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,

ON THE UNDERSTANDING that the forms of cooperation laid down in this Convention should not affect other forms of bilateral or multilateral cooperation;

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

WHEREAS the legal protection and political [control] ([1]) of Europol is of great importance;

WHEREAS the activities of Europol under this Convention are without prejudice to the powers of the European Communities; whereas Europol and the Communities 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:

([1]) Reservation by the French delegation, to be reconsidered in the light of Article 31.

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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 "Europol".

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

OBJECTIVE

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

2. In order to achieve progressively the objective mentioned in paragraph 1, Europol shall initially act to prevent and combat unlawful drug trafficking, crime connected with nuclear and radioactive substances, illegal immigrant smuggling, trade in human beings and motor vehicle crime.

Within two years at the latest following the entry into force of this Convention, Europol shall also deal with terrorist activities against life, limb, personal freedom or property. The Council, acting unanimously in accordance with the procedure laid down in Title VI of the Treaty on European Union, may decide to instruct Europol to deal with such terrorist activities before that period has expired.

The Council, acting unanimously in accordance with the procedure laid down in Title VI of the Treaty on European Union, may 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 own decision and in doing so in particular to set out the budgetary and staffing implications for Europol.

3. Europol's competence as regards a form of crime or specific manifestations thereof shall cover both:

1) illegal money-laundering activities in connection with these forms of crime or specific manifestations thereof;

2) related criminal offences.

The following shall be regarded as related and taken into account in accordance with the procedures set out in Articles 8 and 10:

– criminal offences committed in order to procure the means for perpetrating acts within the sphere of competence of Europol;

– criminal offences committed in order to facilitate or carry out acts within sphere of competence of Europol;

– criminal offences committed to ensure the impunity of acts within the sphere of competence of Europol.

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

5. For the purposes of paragraphs 1 and 2, "unlawful drug trafficking" means the criminal offences listed in Article 3(1) of the United Nations Convention of 20 December 1988 against Illicit Traffic in Narcotic Drugs and Psychotropic Substances and in the provisions amending or replacing that Convention.

ARTICLE 3

TASKS

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

1)to facilitate the exchange of information between the Member States,

2)to obtain, 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 any connections discovered leading to evidence of an offence.

4)to aid investigations in the Member States by forwarding all relevant information to the national units,

5)to maintain a computerized system of information containing data in accordance with Articles 8, 10 and 11.

2. In order to improve the cooperation and effectiveness of the competent authorities in the Member States through the national units with a view to fulfilling the objective set out in Article 2(1), Europol shall furthermore have the following additional tasks:

1)to develop specialist knowledge of 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 the efficient and effective use of the resources available at national level for operational activities,

3)to prepare general situation reports.

3. In the context of its objective under Article 2(1) Europol may in addition, in accordance with its staffing and the budgetary resources at its disposal and within the limits set by the Management Board, 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, and, in particular the relevant national constitutional requirements.

3. Member States shall take the necessary measures to ensure that the national units are able to fulfil their tasks and, in particular, have access to relevant national data.

4. It shall be the task of the national units to:

1)supply Europol on their own initiative with the information and intelligence necessary for it to carry out its tasks;

2)respond to Europol's requests for information, intelligence and advice;

3)keep information and intelligence up to date;

4)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)supply Europol with information for storage in the computerized system;

7)ensure compliance with the law in every exchange of information between themselves and Europol.

5. Without prejudice to the exercise of the responsibilities incumbent upon Member States as enunciated in Article K.2(2) of the Treaty on European Union, a national unit shall not be obliged in a particular case to supply the information and intelligence provided for in paragraph 4, points 1, 2 and 6 and in Articles 7 and 10 if this would mean:

1)harming essential national security interests, or

2)jeopardizing the success of a current investigation or the safety of individuals,

3)involving information pertaining to organizations or specific intelligence activities in the field of State security ([2]).

6. The costs incurred by the national units for communications with Europol shall be borne by the Member States 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 who may be sent by Member States 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 specific provisions of this Convention, liaison officers shall be subject to the national law of the seconding Member State.

([2]) Scrutiny reservations by the Danish and Spanish delegations.

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 Member State and in compliance with the provisions applicable to 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 in 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,

2)forwarding information from Europol to the seconding national unit, and

3)cooperating with the officials of Europol by providing information and giving advice as regards analysis of the information concerning the seconding Member State.

4. At the same time, the liaison officers shall assist in the exchange of information from their national units and the coordination of the resulting measures 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 consult the various files in accordance with the appropriate provisions specified in the relevant Articles.

6. Article 25 shall apply mutatis mutandis to the activity of the liaison officers.

7. Without prejudice to the other provisions of this Convention, the rights and obligations of liaison officers in relation to Europol shall be determined unanimously by the Management Board. ([3])

([3]) The Belgian delegation will give its final opinion on all the voting rules laid down in the Convention in the light of the wording of Articles 25 and 28.

8. Liaison officers shall enjoy the privileges and immunities necessary for the performance of their tasks in accordance with Article 41(2).

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 6

COMPUTERIZED SYSTEM OF COLLECTED INFORMATION

1. Europol shall maintain a computerized system of information consisting of the following components:

1) an information system as referred to in Article 7 with a restricted and precisely defined content which will allow rapid reference to the information available to the Member States and Europol,

2) work files as referred to in Article 10 established for variable periods of time for the purposes of analysis and containing comprehensive information and

3) an index system containing certain particulars from the analysis files referred to in point 2 above, in accordance with the arrangements laid down in Article 11.

2. The computerized system of information operated by Europol must under no circumstances be linked ([4]) to other automated processing systems.

([4]) The United Kingdom delegation would prefer "accessible to" instead of "linked".

TITLE II

INFORMATION SYSTEM

ARTICLE 7

ESTABLISHMENT OF THE INFORMATION SYSTEM

1. In order to perform its tasks, Europol shall establish and maintain a computerized information system. The information system, into which Member States, represented by their national units and liaison officers, may directly input data in compliance with their national procedures, and into which Europol may directly input data supplied by third bodies and countries and analysis data, shall be directly accessible for consultation by national units, liaison officers, the Director, the Deputy Directors and duly empowered Europol officials.

2. Europol shall:

1)comply with the provisions governing cooperation on and operation of the information system, and

2)be 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 21 and 25 regarding the information system are properly implemented.

3. The national unit in each Member State shall be responsible for communication with the information system. It shall in particular be responsible for the security measures referred to in Article 25 in respect of the data-processing equipment used within the territory of the Member State in question, for the review in accordance with Article 21 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 8

CONTENT OF THE INFORMATION SYSTEM

1. The information system may be used to store, modify and utilize only the data necessary for the performance of Europol's tasks, with the exception of data concerning related criminal offences as referred to in Article 2(3), point 2. Data entered shall relate to:

1) persons who, in accordance with the national law of the Member State concerned, are suspected of having committed or having taken part in a criminal offence for which Europol is competent under Article 2 or who have been convicted of such an offence,

2) persons who there are grounds for believing will commit criminal offences for which Europol is competent under Article 2 ([5]).

([5]) Reservations by the German, Netherlands and Swedish delegations.
Scrutiny reservation by the Belgian delegation.

2. Personal data as referred to in paragraph 1 may include only the following details:

1)surname, maiden name, given names and any alias or assumed name,

2)date and place of birth,

3)nationality,

4)sex, and,

5)where necessary, other characteristics likely to assist in identification, including any specific objective physical characteristics not subject to change.

3. In addition to the data referred to in paragraph 2 and data on Europol or the inputting national unit, the information system may also be used to store, modify and utilize the following details concerning the persons referred to in paragraph 1:

1)criminal offences, alleged crimes and when and where they were committed,

2)means which were or may be used to commit the crimes,

3)(-)

4)departments handling the case and their filing references,

5)suspected membership of a criminal organization,

6)convictions, where they relate to criminal offences for which Europol is competent in accordance with Article 2.

These data may also be input when they do not yet contain any references to persons. 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. Additional information held by Europol or national units concerning the groups of persons referred to in paragraph 1 may be communicated to any national unit or Europol should either so request. National units shall do so in compliance with their national law.

Where the additional information concerns one or more related criminal offences as defined in Article 2(3), the data stored in the information system shall be marked accordingly to enable national units and Europol to exchange information on the related criminal offences. ([6])

5. If proceedings against the person concerned are dropped or if that person is acquitted, the data relating to either decision shall be deleted.

ARTICLE 9

RIGHT OF ACCESS TO THE INFORMATION SYSTEM

1. Only national units, liaison officers, and the Director, Deputy Directors or duly empowered Europol officials shall have the right 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 effected in accordance with the laws, regulations, administrative provisions and procedures of the retrieving unit, subject to any additional provisions contained in this Convention.

([6]) The German delegation asked that the reference to any indication of related criminal offences not appear in this subparagraph and that it be considered only as a possibility.

2. Only the unit which entered the data may modify, correct or delete such data. Where a unit has reason to believe that data as referred to in Article 8(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 modify, supplement, correct or delete the data immediately. Where data as referred to in Article 8(3) are stored on a person any unit may enter additional data as referred to in Article 8(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 8(2) input by it and where data as referred to in Article 8(3) are held on the same person but input by other units, responsibility in terms of data protection legislation pursuant to Article 15(1) and the right to modify, supplement, correct and delete such data pursuant to Article 8(2) shall be transferred to the next unit to have entered data as referred to in Article 8(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.

TITLE III

WORK FILES FOR THE PURPOSES OF ANALYSIS

ARTICLE 10

COLLECTION, PROCESSING AND UTILIZATION OF PERSONAL DATA

1. Where this is necessary to achieve the objectives laid down in Article 2(1), Europol, in addition to data of a non-personal nature, may store, modify, and utilize in other files data on criminal offences for which Europol is competent under Article 2(2), including the related criminal offences provided for in Article 2(3) point 2 [which are intended for specific analyses], and concerning:

1)persons as referred to in Article 8(1), ([7])

2)persons who might be called on to testify in investigations in connection with the offences under consideration or in subsequent criminal proceedings,

3)persons who have been the victims of one of the offences under consideration or with regard to whom certain facts give reason for believing that they could be the victims of such an offence,

([7]) Reservation by the Swedish delegation.

4)contacts and associates, and

5)persons who can provide information on the criminal offences under consideration.

([8])

The collection, storage and processing of the data listed in the first sentence of Article 6 of the Council of Europe Convention of 28 January 1981 with regard to Automatic Processing of Personal Data shall not be permitted unless strictly necessary for the purposes of the file concerned and unless such data supplement other personal data already entered in that file. It shall be prohibited to select a particular group of persons solely on the basis of the data listed in the first sentence of Article 6 of the Council of Europe Convention of 28 January 1981 in breach of the aforementioned rules with regard to purpose.

The Council, acting unanimously, in accordance with the procedure laid down in Title VI of the Treaty on European Union and on a proposal from the Management Board, ([9]) shall adopt implementing rules for data files containing additional details, in particular with regard to the categories of personal data referred to in this Article.

2. Such files shall be opened for the purposes of analysis [defined as the assembly, processing or utilization of data with the aim of helping a criminal investigation]. Each analysis project shall entail the establishment of an analysis group closely associating the following participants in accordance with the tasks defined in Article 3(1) and (2) and Article 5(3):

([8]) Proposal by the German delegation:
"Data relating to the persons referred to in point 1 of (1) and exceeding the scope of Article 8(2) and (3) may not be stored unless, by virtue of the nature or circumstances of the act concerning or on the basis of other intelligence, there is a likelihood of legal proceedings against such persons for offences falling within the competence of Europol in accordance with Article 2."

([9]) The Council Legal Service was asked to give its opinion on the wording of this proposal.

1)analysts and other Europol officials designated by the Europol Directorate: only analysts shall be authorized to enter data into and retrieve data from the file concerned;

2)the liaison officers and/or experts of the Member States supplying the information or concerned by the analysis within the meaning of paragraph 6.

3. At the request of Europol or on their own initiative, national units shall, subject to Article 4(5), communicate to Europol all the information which it may require for the performance of its tasks under Article 3(1) point 2. The Member States shall communicate such data only where processing thereof for the purposes of preventing, analyzing or combating offences is also authorized by their national law.

Depending on their degree of sensitivity, data from national units may be routed directly and by whatever means may be appropriate to the analysis groups, whether via the liaison officers concerned or not.

4. If, in addition to the data referred to in paragraph 3, Europol requires other information for the performance of tasks under Article 3(1) point 2, Europol may request:

1)the European Communities and bodies governed by public law established under the Treaties establishing those Communities,

2)other bodies governed by public law established in the framework of the European Union,

3)bodies which are based on an agreement between two or more Member States of the European Union,

4)third States,

5)international organizations and their subordinate bodies governed by public law,

6)other bodies governed by public law which are based on an agreement between two or more States, and

7)the International Criminal Police Organization,

to forward the relevant information to it by whatever means may be appropriate. It may also, under the same conditions and by the same means, accept information provided by those various bodies on their own initiative. 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 the rules to be observed by Europol in this respect.

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), point 2.

6. If an analysis is of a general nature and of a strategic type, all Member States, through liaison officers and/or experts, shall be fully associated in the findings thereof, in particular through the communication of reports drawn up by Europol.

If the analysis bears on specific cases not concerning all Member States and has a direct operational aim, representatives of the following Member States shall participate therein:

1)Member States which were the source of the information giving rise to the decision to open the analysis file, or those which are directly concerned by that information and Member States subsequently invited by the analysis group to take part in the analysis because they are also becoming concerned;

2)Member States which learn from consulting the index system that they need to be informed and assert that need to know under the conditions laid down in paragraph 7.

7. The need to be informed may be claimed by authorized liaison officers. Each Member State shall nominate and authorize a limited number of such liaison officers. It shall forward the list thereof to the Management Board.

A liaison officer shall claim the need to be informed as defined in paragraph 6 by means of a written reasoned statement approved by the authority to which he is subordinate in his Member State and forwarded to all the participants in the analysis. He shall then be automatically associated in the analysis in progress.

If an objection is raised in the analysis group, automatic association shall be deferred until completion of a conciliation procedure, which may comprise three stages as follows:

1)the participants in the analysis shall endeavour to reach agreement with the liaison officer claiming the need to be informed; they shall have no more than eight days for that purpose;

2)if no agreement is reached, the heads of the national units concerned and the Directorate of Europol shall meet within three days;

3)if the disagreement persists, the representatives of the parties concerned on the Management Board shall meet within eight days. If the Member State concerned does not waive its need to be informed, automatic association of that Member State shall be decided by consensus.

8. The Member State communicating an item of data to Europol shall be the sole judge of the degree of its sensitivity and variations thereof. Any dissemination or operational use of analysis data shall be decided on in consultation with the participants in the analysis. A Member State joining an analysis in progress may not, in particular, disseminate or use the data without the prior agreement of the Member States initially concerned.

ARTICLE 11

INDEX SYSTEM

1. An index system shall be created by Europol for the data stored on the files referred to in Article 10(1).

2. The Director, Deputy Directors and duly empowered officials of Europol and liaison officers shall have the right to consult the index system. The index system shall be such that it is clear to the liaison officer consulting it, from the data being consulted, that the files referred to in Articles 10(1) and 5a(2) contain data concerning the seconding Member State.

Access by liaison officers shall be defined in such a way that it is possible to determine whether or not an item of information is stored, but that it is not possible to establish connections or further conclusions regarding the content of the files.

3. The detailed procedures for the design of the index system shall be defined by the Management Board acting unanimously.

ARTICLE 12

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 groups of persons on whom data are stored,

4)the nature of the data to be stored, and any of the data listed in the first sentence of Article 6 of the Council of Europe Convention of 28 January 1981 which are strictly necessary,

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 may be communicated, to which recipients and under what procedure,

8)the time-limits for examination and duration of storage,

9)the method of establishing the audit log.

The joint supervisory body provided for in Article 24 shall immediately be advised by the Director of Europol of the plan to order the opening of such a data file and shall receive the dossier so that it may address any comments it deems necessary to the Management Board.

2. If the urgency of the matter is such as to preclude obtaining the approval of the Management Board as required under paragraph 1, the Director, on his own initiative or at the request of the Member States concerned, may by a reasoned decision, order the opening of a data file. At the same time he shall inform the members of the Management Board of his decision. The procedure pursuant to paragraph 1 shall then be set in motion without delay and completed as soon as possible.

TITLE IV

COMMON PROVISIONS ON INFORMATION PROCESSING

ARTICLE 13

DUTY TO NOTIFY

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

ARTICLE 14

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 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.

2. The communication of personal data provided for in this Convention may not begin until the data protection rules laid down in paragraph 1 above have entered into force on the territory of each of the Member States 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 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. ([10])

ARTICLE 15

RESPONSIBILITY IN DATA PROTECTION MATTERS

1. Subject to other provisions in this Convention, the responsibility for data stored at Europol, in particular as regards the legality of the collection, the transmission to Europol and the input of data, as well as their accuracy, their up-to-date nature and verification of the storage time-limits, shall lie with:

1)the Member State which input or otherwise communicated the data;

2)Europol in respect of data communicated to Europol by third parties or which result from analyses conducted by Europol.

([10]) The Belgian delegation has proposed including non-automatic processing of personal data (10610/94 EUROPOL 116).
This provision would cause problems for a number of delegations:
Spain, the United Kingdom, Italy, France, Ireland, Luxembourg, Sweden and Denmark have entered substantive reservations. The Austrian delegation has entered a scrutiny reservation.

2. In addition, [subject to other provisions in this Convention], Europol shall be responsible for all data received by Europol and processed by it, whether such data be in the information system referred to in Article 7, in the data files opened for the purposes of analysis referred to in Article 10 or in the index system referred to in Article 11.

3. Europol shall store data in such a way that it can be established by which Member State or third party the data were transmitted or whether they are the result of an analysis by Europol.

ARTICLE 16 ([11])

PROVISIONS ON THE DRAWING UP OF REPORTS

On average, Europol shall draw up reports for at least one in ten retrievals of personal data – and for each retrieval made within the information system referred to in Article 7 – in order to check whether they are permissible under law. The data contained in the reports 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 ongoing control. The details can be decided upon by the Management Board following consultation with the joint supervisory body.

([11]) Reminder: scrutiny reservation by the Danish delegation.

ARTICLE 17

RULES ON THE USE OF DATA

1. Personal data retrieved from the information system, the index system or data files opened for the purposes of analysis may be disseminated or utilized only by the competent authorities of the Member States in order to prevent and combat crimes falling within the competence of Europol and to combat other serious forms of crime.

Europol may disseminate or utilize the data referred to in paragraph 1 only for the performance of its tasks as referred to in Article 3.

2. If, in the case of certain data, the communicating Member State or the communicating third State or third body 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. ([12])

3. In addition, ([13]) the data referred to in paragraph 1 shall be disseminated and used in accordance with the laws, regulations, administrative provisions and procedures of the competent authorities of the Member States which use the data.

([12]) The German delegation wanted it to be possible to communicate data for use by authorities for purposes other than those provided for under this Convention, subject to the authorization of the Member State which was the source of the data.
The Luxembourg delegation entered a scrutiny reservation on this proposal.

([13]) Scrutiny reservation by the United Kingdom and reservation by Denmark.
Linguistic reservation by Germany.

ARTICLE 18

COMMUNICATION OF DATA TO THIRD STATES AND THIRD BODIES

1. Europol may under the conditions laid down in paragraph 4 communicate personal data which it holds to third states and third bodies 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 in that State or that body, and

3)this is permissible under the general rules within the meaning of paragraph 2.

2. In accordance with the procedure in Title VI of the Treaty on European Union, and taking into account the circumstances referred to in paragraph 3, the Council, acting unanimously, shall determine the general rules for the communication of personal data by Europol to the third States and third bodies 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 24.

3. The adequacy of the level of data protection afforded by third States and third bodies within the meaning of Article 10(4) 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 to the third States and third bodies within the meaning of Article 10(4).

4. If the data referred to have been communicated to Europol by a Member State, Europol may communicate them to third States and third bodies only with the Member State's consent. The Member State may give its prior consent, in general or other terms, to such communication; that consent may be withdrawn at any time. ([14])

If the data have not been communicated by a Member State, Europol shall satisfy itself that communication of those data is not liable to:

1)obstruct the proper performance of the tasks falling within a Member State's sphere of competence,

2)jeopardize the security and public order of a Member State or otherwise prejudice its general welfare.

5. Europol shall be responsible for the legality of the 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 personal data required for a Europol inquiry.

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.

([14]) The German delegation wanted to incorporate Article 16(1) point 4 of EUROPOL 112 REV 2, which is worded as follows:
"4. no restrictions have been communicated by the Member State which transmitted the data to Europol."

ARTICLE 19

RIGHT OF ACCESS

1. Any person wishing to exercise his right of access to data relating to him which have been stored within Europol or to have such data checked may make a request to that effect free of charge to any Member State or any national competent authority which shall refer it to Europol without delay and inform the enquirer that Europol will reply to him directly.

2. The request must be dealt with within three months following its receipt by the Member State or national competent authority concerned.

3. The right of any person to have access to data relating to him shall be exercised in accordance with the law of the Member State where the right is claimed.

4. As regards data entered:

1) within the information system defined in Article 8, a decision to communicate such data cannot be taken unless Europol or the Member State which entered the data or the Member State directly concerned by communication of such data have first had the opportunity of stating their position which may extend to a refusal to communicate the data. Europol shall be informed of the data which may be communicated and the arrangements for communicating such data.

2) within the work files for the purposes of analysis as defined in Article 10, the communication of such data shall be conditional upon the consensus of the Member States participating in the analysis, within the meaning of Article 10(2), and the consensus of the Member State(s) directly concerned by the communication of such data.

5. The communication of data which have been entered both in the information system and in the work files for the purposes of analysis shall be refused if such refusal is necessary to:

1)enable Europol to fulfil its duties properly,

2)protect the security of the Member States and public order or to prevent crime;

3)protect the rights and liberties of third parties,

considerations which it follows cannot be overridden by the interests of the person concerned by the communication of the information.

6. Where information concerning an enquirer is to be found only in the information system, Europol shall forward to him the data which may be communicated in accordance with the relevant procedures laid down in paragraph 4.1. It shall also inform him that he may appeal to the joint supervisory body. The joint supervisory body and the national supervisory body of the Member State which has communicated the data to Europol shall consult each other on the decision to be taken.

7. Where information concerning the enquirer is to be found only in the work files for the purposes of analysis, it shall be communicated to him by Europol under the conditions provided for in paragraph 4.2. Should one or more of the Member States participating in the analysis object to this, Europol shall notify the person concerned that it has carried out the necessary checks, without giving any information which might reveal to him whether or not he is known. It shall also inform him that he can appeal to the supervisory body.

If the information concerning an enquirer is to be found both in the information system and in the work files for the purposes of analysis, Europol shall give a general reply in accordance with the arrangements set out in paragraph 4.

If the enquirer lodges an appeal, that appeal shall, as regards the data contained in the work files for the purposes of analysis, be examined by the joint supervisory body provided for in Article 24. Should the Member State(s) participating in the analysis still object, the joint supervisory body, after hearing those Member State(s), may overrule such objections but only by a majority of two-thirds of its members. If there is no such majority, the joint supervisory body shall in turn notify the enquirer that it has carried out the necessary checks, without giving any information which might reveal to him whether or not he is known.

ARTICLE 20

CORRECTION AND DELETION OF DATA IN DATA FILES

1. If it emerges that data held by Europol which have been communicated to it by third States or third bodies or which are the result of its own analyses are incorrect or that their input or storage contravenes this Convention, Europol shall correct or delete such data. Any person shall have the right to request that data relating to him be checked and, if found to be incorrect, to have such data corrected or deleted.

2. If data that are incorrect or that contravene this Convention have been communicated to Europol by Member States, Europol shall be obliged to correct or delete them in collaboration with the Member State(s) concerned. If the errors in the data result from their being taken over and stored by Europol, Europol shall take remedial action in consultation with the Member States.

3. In these various cases, the Member State or Member States which are recipients of the data shall be notified forthwith. The recipient Member State or Member States shall also correct or delete those data.

ARTICLE 21

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, those data 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 occur if it would damage the interests of the data subject which require protection. In such cases, the data may be used only with the consent of the data subject.

ARTICLE 22

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. Should it be found that data in Europol paper files are incorrect, that fact shall be recorded in the file concerned.

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 20(3) shall apply mutatis mutandis.

ARTICLE 23

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 the input, the retrieval and any communication to Europol of personal data by the Member State concerned and to examine whether this violates the rights of the data subject. For this purpose, the supervisory body shall have access at the national unit or at the liaison officers' premises to the national data contained in the information system, in the data files opened for purposes of analysis and in the index system.

For their supervisory purposes, national supervisory bodies shall have access to the offices and documents of national units and of their respective liaison officers at Europol ([15]).

In addition, national supervisory bodies shall supervise the activities of national units under Article 4(4) and the activities of liaison officers under Article 5(3), points 1 and 3 and Article 5(4) and (5).

([15]) The United Kingdom delegation wanted such supervision to be carried out in accordance with the relevant national rules.

2. Each individual shall have the right to request the national supervisory body to examine the permissibility of any 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.

ARTICLE 24

JOINT SUPERVISORY BODY ([16])

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 ensure that the rights of the individual are not violated by the storage, processing and utilization of the data held by Europol. In addition, it shall supervise the activities of liaison officers under Article 5(3), point 2. 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:

1) supply the information it requests, give it access to all documents and proper files as well as access to the data stored in the system, and

2) allow it free access at any time to all its premises.

([16]) Scrutiny reservation by the German delegation.

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. In accordance with Article 19, each individual shall have the right to request the joint supervisory body to ensure that the manner in which his personal data have been collected, stored, processed and utilized by Europol is lawful and accurate.

5. (–)

6. (–)

7. If the joint supervisory body notes any violations of the provisions of this Convention in the storage, processing or utilization of personal data, it shall make any complaints it deems necessary to the Director of Europol and shall request him to reply within a time limit to be determined by it. The Director shall keep the Management Board informed of the entire procedure.

8. The joint supervisory body shall draw up activity reports at regular intervals. In accordance with the procedure laid down in Title VI of the Treaty on European Union these shall be forwarded to the Council; 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 be assisted by a secretariat, the tasks of which shall be defined in the rules of procedure.

ARTICLE 25

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 have been input into automated data processing systems and when and by whom the data were input (input control),

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 (recovery),

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 cannot be corrupted by means of a malfunctioning of the system (integrity).

TITLE V

LEGAL STATUS, ORGANIZATION AND FINANCIAL PROVISIONS

ARTICLE 26

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 movable or immovable 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 States and third bodies within the meaning of Article 10(4) the necessary confidentiality agreements pursuant to Article 18(6) as well as other arrangements 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 27

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 28

MANAGEMENT BOARD

1. Europol shall have a Management Board. The Management Board:

1)shall take part in the extension of Europol's objectives (Article 2);

2)shall define unanimously liaison officers' rights and obligations towards Europol (Article 5);

3)shall decide unanimously on the number of liaison officers the Member States may send to Europol (Article 5);

4)shall take part in the adoption of implementing rules governing data files (Article 10);

5)shall take part in the adoption of rules governing Europol's relations with third States and third bodies within the meaning of Article 10(4) (Articles 10, 18 and 42);

6)shall unanimously decide on details concerning amendments to the index system (Article 11);

7)shall approve by a two-thirds majority orders opening data files (Article 12);

8)may deliver opinions on the comments and reports of the joint supervisory body (Article 24);

9)shall take part in the drawing up of a procedure for checking the legal character of retrievals in the information system (Article 16);

10) shall take part in the appointment and dismissal of the Director and Deputy Directors (Article 29);

11) shall oversee the proper performance of the Director's duties (Articles 6 and 29);

12) shall take part in the adoption of staff regulations (Article 30);

13) shall take part in the preparation of agreements on confidentiality and the adoption of provisions on the protection of confidentiality (Articles 18 and 31);

14) shall take part in the drawing up of the budget, including the establishment plan, the auditing and the discharge to be given to the Director (Articles 35 and 36);

15) shall adopt unanimously the five-year financing plan (Article 35);

16) shall appoint unanimously the financial controller and oversee the performance of his duties (Article 35);

17) shall take part in the adoption of the financial regulation (Article 35);

18) shall unanimously approve the conclusion of the headquarters agreement (Article 37);

19) shall adopt unanimously the rules for the security clearance of Europol officials;

20) shall have jurisdiction in disputes between a Member State and Europol or between Member States concerning compensation paid under the liability for unauthorized or incorrect processing of data (Article 38);

21) shall take part in any amendment of this Convention (Article 43);

22) shall be responsible for any other tasks assigned to it by the Council particularly in provisions for the implementation of this Convention. ([17])

2. The Management Board shall be composed of one representative of 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 of procedure.

8. 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.

([17]) The Belgian delegation suggests that it should be possible to consult the Management Board when the Director engages or dismisses employees (Article 30).

10. The Management Board shall adopt unanimously each year:

1)a general report on Europol's activities during the previous year,

2)a report on Europol's future activities taking into account Member States' operational requirements and budgetary and staffing implications for Europol. These reports shall be submitted to the Council in accordance with the procedure laid down in Title VI of the Treaty on European Union.

ARTICLE 29

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 ([18]).

3. The Director shall be responsible for:

1)performance of the tasks assigned to Europol;

2)day-to-day administration;

([18]) Scrutiny reservation by the Italian delegation.

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 paragraphs 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 30

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 and without prejudice to Title VI of the Treaty on European Union.

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 take into account the need to ensure the adequate representation of nationals of all Member States and of 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 31

CONFIDENTIALITY

1. Europol and the Member States shall take appropriate measures to protect information subject to the requirement of confidentiality which is obtained by 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 appropriate rules on confidentiality 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 has entrusted persons with a sensitive activity, Member States shall undertake to arrange, at the request of the Director of Europol, for security screening of their own nationals to be carried out 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 ([19]). The relevant authority 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 entrust with the processing of data at Europol, only those persons who have had special training and undergone security screening.

ARTICLE 32

OBLIGATION OF DISCRETION AND CONFIDENTIALITY

1. Members of Europol organs, the Deputy Directors, employees of Europol and liaison officers shall refrain from any action and any expression of opinion which might reflect unfavourably on Europol or prejudice its activities.

2. Members of Europol organs, the Deputy Directors, employees of Europol and liaison officers, as well as any other person under a particular obligation of discretion or confidentiality, 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 confidentiality shall apply even after leaving office or employment, or after termination of activities. The particular obligation laid down in the first sentence shall be notified by Europol, and a warning given of the legal consequences of any infringement; a written record shall be drawn up of such notification.

([19]) French reservation.

3. Members of Europol organs, the Deputy Directors, employees of Europol and liaison officers, as well as persons under the obligation provided for in paragraph 2, may not give evidence 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 reference to the Director or the Management Board. This procedure is intended to enable the Director or Management Board to take the necessary measures, where appropriate, to safeguard the confidentiality of certain data given in evidence. This obligation shall apply even after leaving office or employment or after termination of activities.

The national unit of any Member State involved in such a request for the giving of evidence or a statement shall be immediately informed by the Director of Europol ([20]).

4. Each Member State shall treat any infringement of the obligation of discretion or confidentiality laid down in paragraphs 2 and 3 as a breach of its law on official or professional secrets or its provisions for the protection of confidential material.

5. (-) ([1])

ARTICLE 33

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.

([20]) German reservation.

2. ([21]) ([22])

3. (–) ([1])

4. The translations required for Europol's work shall be provided by the translation centre of the European Union institutions.

ARTICLE 34

INFORMING THE EUROPEAN PARLIAMENT ([23])

1. The Council Presidency shall each year forward a special report to the European Parliament on the work of Europol. The European Parliament shall be consulted should this Convention be amended in any way.

2. The Council Presidency or its representative appointed by the Presidency shall, with respect to the European Parliament, take into account the obligations of discretion and confidentiality.

3. The obligations laid down in this Article shall be without prejudice to the rights of national parliaments, to Article K.6 on European Union and to the general principles applicable to relations with the European Parliament pursuant to Title VI of the Treaty on European Union.

([21]) Reservation by the German delegation which wanted the text of Article 30 in 10324/2/94 EUROPOL 112 REV 2 retained.

([22]) Reservation by the French delegation which wanted the text of Article 30 in 10324/4/94 EUROPOL 112 REV 4 retained.

([23]) Some Member States consider that the rules contained in Article K.6 of the Treaty on European Union are sufficient.

ARTICLE 35

BUDGET

1. Estimates shall be drawn up of all of Europol's income 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 income 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 by other incidental income. Each Member State's financial 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, Euratom of 13 February 1989 on the harmonization of the compilation of gross national product at market prices.

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 five-year financing plan. It shall act unanimously.

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 unanimously. The adoption of the budget by the Council shall entail the obligation for each Member State to make available promptly ([2]) the financial contribution due from it ([24]).

6. The Director shall implement the budget in accordance with the financial regulation provided for in paragraph 9.

7. Monitoring of the commitment and disbursement of expenditure and of the establishment and collection of income shall be carried out by a financial controller from an official audit body of one of the Member States 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 by the financial controller in the case of certain items of income 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, unanimously 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 financial contributions by the Member States.

([24]) Presidency note:

Where unanimity is not reached, the last budget adopted by the Council is extended until the disagreement is resolved. A provision to this effect could be included in the Convention, notably in the Financial Regulation in the specific part referring to the procedures for establishing the budget.

([2]) Reservation by the Swedish delegation on the voting rules for adopting the budget in paragraph 5.

Reservation by the German delegation, which proposed abiding by the qualified majority rule in 10324/2/94 EUROPOL 112 REV 2 for all votes.

ARTICLE 36

AUDITING ([25])

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 carried out by a joint audit committee composed of three members, appointed "intuitu personae" by the President of the Court of Auditors of the European Communities acting on the basis of specific terms of reference. The term of office of the members shall be three years; these shall alternate in alphabetical order such that each year the member who has been on the audit committee for three years shall be replaced. Notwithstanding the provisions of the second sentence, 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,

in the initial composition of the joint audit committee after Europol has begun to operate.

The cost of the audit shall be charged to the budget provided for in Article 35.

3. The joint audit committee 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 by the Management Board.

([25]) The majority of the Member States is in favour of the Court of Auditors of the European Communities being entrusted with the task, whilst two Member States prefer the setting up of an independent body.

4. The Europol Director shall provide the members of the joint audit committee with all information and every assistance which they require in order to perform 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. The detailed rules for performing audits shall be laid down in the Financial Regulation.

ARTICLE 37

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 38

LIABILITY FOR UNAUTHORIZED OR INCORRECT DATA PROCESSING

1. Each Member State shall be liable, in accordance with its national law, for any damage caused to an individual as a result of legal or factual errors in data stored or processed at Europol. Only the Member State in which the damage was incurred may be the subject of an action for compensation on the part of the injured party, who shall apply to the courts having jurisdiction under national law.

A Member State may not plead that another Member State had transmitted inaccurate data in order to avoid its liability under its national legislation vis-à-vis an injured party.

2. If these legal or factual errors occurred as a result of data erroneously communicated by another Member State or as a result of unauthorized or incorrect storage or processing by Europol, Europol or the other Member State in question shall be bound to repay, on request, the amounts paid as compensation unless the data were used by the Member State in the territory of which the damage was caused in breach of this Convention.

3. Any dispute between that Member State and Europol or another Member State over the principle or amount of the repayment must be referred to the Management Board and if necessary to the Council.

ARTICLE 39

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 38, 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 and regardless of the different procedures for claiming damages which exist under the law of the Member States.

3. The injured party shall have the right, in accordance with the general principles common to the legal systems of the Member States, to demand that Europol refrain from any action or drop it.

ARTICLE 40

JURISDICTION ([26])
[SETTLEMENT OF DISPUTES]

1. Disputes between Member States on the application of this Convention shall be discussed in the Council in accordance with the procedures set out in Title VI of the Treaty on European Union with the aim of finding a settlement.

2. Any dispute arising from the application of the Staff Regulations or the implementation of employment contracts shall be governed by the Staff Regulations.

([26]) A majority of delegations favour jurisdiction by the Court of Justice.

The Staff Regulations may lay down that the courts of the host State shall have jurisdiction in such disputes.

3. The rules on Europol's third party liability in respect of injury caused to third parties shall be determined in the headquarters agreement concluded between the host State and Europol.

ARTICLE 41

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.

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 necessary for the proper performance of the tasks of the liaison officers in the State where Europol has its headquarters. To that end, the rules in question shall be set out in a separate chapter of the Protocol referred to in paragraph 1 ([27]).

3. The Protocol referred to in paragraph 1 shall be adopted by the Council acting unanimously in accordance with the procedure laid down in Title VI of the Treaty on European Union and approved by the Member States in accordance with their respective constitutional requirements.

([27]) The Belgian delegation proposed that members of the families of liaison officers should also be covered here as in paragraph 1.
The Netherlands delegation undertook to produce an alternative proposal.

TITLE VII

FINAL PROVISIONS

ARTICLE 42

RELATIONS WITH THIRD STATES AND THIRD BODIES

1. Insofar as is relevant for the performance of the tasks described in Article 3, Europol shall establish and maintain cooperative relations with third bodies within the meaning of Article 10(4), points 1 to 3. The Management Board shall unanimously draw up rules governing such relations. This provision shall be without prejudice to Article 10(4) and (5) and Article 18(2); 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 the tasks described in Article 3, Europol may also establish and maintain relations with third States and third bodies within the meaning of Article 10(4), points 4, 5, 6 and 7 ([28]). Having obtained the opinion of the Management Board, the Council, acting unanimously in accordance with the procedure laid down in Title VI of the Treaty on European Union, shall draw up rules governing the relations referred to in the first sentence. The third sentence of paragraph 1 shall apply mutatis mutandis.

([28]) The German delegation requested that the following sentence be reinserted: "Europol should as a matter of priority establish such relations with the competent bodies of those European States with which the European Communities and their Member States have concluded agreements".

ARTICLE 43

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 45(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 44

RESERVATIONS

Reservations shall not be permissible in respect of this Convention.

ARTICLE 45

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 final 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. Without prejudice to 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), 30(3), 31(1), 35(9), 37 and 41(1) and (2) enters into force.

5. When Europol takes up its activities, the activities of the Europol Drugs Unit under the joint action concerning the Europol Drugs Unit of 10 March 1995 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 this Convention has been signed, Member States, acting either individually or in common, shall take all preparatory measures under their national law which are necessary for the commencement of Europol activities.

ARTICLE 46

TERRITORIAL SCOPE OF THE CONVENTION

[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.] ([29])

ARTICLE 47

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.

([29]) Spanish reservation.

The Netherlands delegation wanted the above Article to apply to the territories of Aruba and the Netherlands Antilles.

The United Kingdom delegation proposed that each Member State should decide on the territorial scope of the Convention for its own part when the instruments for ratification of the Convention were deposited.

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, Finnish, French, German, Greek, Irish, Italian, Portuguese, Spanish and Swedish 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

REFERRED TO IN ARTICLE 2

List of other serious forms of international crime which Europol could deal with in addition to those already provided for in Article 2(2) in compliance with Europol's objectives as set out in Article 2(1).

Against life, limb or personal freedom:

– murder, grievous bodily injury
– illicit trade in human organs and tissue
– kidnapping, illegal restraint and hostage-taking
– racism and xenophobia

Against property or public goods including fraud: ([30])

– organized robbery
– illicit trafficking in cultural goods, including antiquities and works of art
– swindling and fraud
– racketeering and extortion
– counterfeiting and product piracy
– forgery of administrative documents and trafficking therein
– forgery of money and means of payment
– computer crime
– corruption

([30]) Reservation by the Luxembourg delegation on the concept of fraud.

Illegal trading and harm to the environment:

– illicit trafficking in arms, ammunition and explosives
– illicit trafficking in endangered animal species
– illicit trafficking in endangered plant species and varieties
– environmental crime
– illicit trafficking in hormonal substances and other growth promoters.

In addition, in accordance with Article 2(2), the act of instructing Europol to deal with one of the forms of crime listed above implies that it is also competent to deal with the related money-laundering activities and the related criminal offences.

With regard to the forms of crime listed in Article 2(2) of the Convention:

– "crime connected with nuclear and radioactive substances" means the criminal offences listed in Article 7(1) of the Convention on the Physical Protection of Nuclear Material, signed at Vienna and New York on 3 March 1980; ([31])

– "illegal immigrant smuggling" means activities intended deliberately to facilitate, for financial gain, the entry into and residence in the territory of the Member States of the European Union, contrary to the rules and conditions applicable in the Member States with regard to the admission of aliens, of persons who are not nationals of the Member States of the Union and who are not entitled to enter their territory;

– "traffic in human beings" means criminal offences connected with the exploitation of prostitution, forms of sexual exploitation and assault of minors or encouragement to abandon children for financial gain;

([31]) Definition proposed by the Commission.
"Crime connected with nuclear and radioactive substances means unlawful actions concerning nuclear and/or radioactive materials, as defined in Article 197 Euratom Treaty and Council Directive 80/836/Euratom of 15 July 1980, respectively."

– "motor vehicle crime" means the theft or misappropriation of motor vehicles, lorries, semi-trailers, the loads of lorries or semi-trailers, buses, motorcycles, caravans and agricultural vehicles, works vehicles, and the spare parts for such vehicles, and the receiving and concealing of such objects;

– "illegal money-laundering activities" means the criminal offences listed in Article 6 of the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, signed at Strasbourg on 8 November 1990.

([32])

([32]) Reservations by the Belgian and Danish delegations on the absence of a definition of terrorism.