

EUROPEAN PARLIAMENT



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A4-0335/95

REPORT

on Europol

Committee on Civil Liberties and Internal Affairs

Rapporteur: Mr Hartmut Nassauer

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- * Consultation procedure
simple majority
- **I Cooperation procedure (first reading)
simple majority
- **II Cooperation procedure (second reading)
simple majority to approve the common position
absolute majority of Parliament's component Members to reject or amend the common position
- *** Assent procedure
absolute majority of Parliament's component Members to give assent
except for 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
absolute majority of Parliament's component Members either to adopt a declaration of intent
to reject the common position, or to amend or confirm the rejection of the common position
- ***III Codecision procedure (third reading)
simple majority to approve the joint text
absolute majority of Parliament's component Members to reject the Council text

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By letter of 5 December 1994 the Committee on Civil Liberties and Internal Affairs requested authorization to draw up a report on Europol.

At the sitting of 16 January 1995 the President of the European Parliament announced that the committee had been authorized to report on this subject.

At its meeting of 6 September 1995 the committee appointed Mr Nassauer rapporteur.

By letter of 10 March 1995 the Council forwarded to Parliament its report on the activities of the Europol Drugs Unit between 1 January and 31 December 1994 - First Year Progress Report (C4-0094/95).

At the sitting of 3 April 1995 the President of Parliament announced that he had referred this report to the Committee on Civil Liberties and Internal Affairs as the committee responsible and to the Committee on Budgetary Control for its opinion.

By letter of 14 June 1995 the Council forwarded to Parliament its draft act establishing the Convention, based on Article K.3 of the TEU, establishing a European Union Police Office (Europol) (C4-0250/95).

At the sitting of 10 July 1995 the President of Parliament announced that he had referred this draft act to the Committee on Civil Liberties and Internal Affairs as the committee responsible and to the Committee on Budgetary Control, the Committee on Legal Affairs and Citizens' Rights and the Committee on Economic and Monetary Affairs and Industrial Policy for their opinions.

By letter of 8 November 1995 the Council forwarded to Parliament the Convention, based on Article K.3 of the TEU, establishing a European Union Police Office (Europol Convention) (C4-0521/95).

At the sitting of 28 November 1995 the President of Parliament announced that he had referred this Convention to the Committee on Civil Liberties and Internal Affairs as the committee responsible and to the Committee on Economic and Monetary Affairs and Industrial Policy, the Committee on Legal Affairs and Citizens' Rights and the Committee on Budgetary Control for their opinions.

At its meetings of 2 February, 26 April, 20 November, 11 December and 19 December 1995, the committee considered the draft report.

At the last meeting it adopted the motion for a resolution by 19 votes to 3, with 1 abstention.

The following took part in the vote: Marinho, chairman; Colombo Svevo and Wiebenga, vice-chairmen; Nassauer, rapporteur; Berthu (for de Villiers), Caccavale, D'Andrea, Deprez, Donnelly B. (for Cederschiöld), Gaigg (for Linzer), Gomolka (for Posselt), Kreissl-Dörfler (for Orlando), Lambraki (for Ford), Lehne, Lindeperg, Lööw, Newman, Palacio (for De Esteban Martin), Pradier (for Fouque), Reding, Roth, Salisch and Stewart-Clark.

The opinions of the Committee on Economic and Monetary Affairs and Industrial Policy, the Committee on Legal Affairs and Citizens' Rights and the Committee on Budgetary Control are attached.

The report was tabled on 20 December 1995.

The deadline for tabling amendments will appear on the draft agenda for the part-session at which the report is to be considered.

A
MOTION FOR A RESOLUTION
on Europol

The European Parliament,

- having regard to Article K.1, point 9, Article K.3(2) and Article K.6(2) of the Treaty on European Union,
 - having regard to the Declaration on police cooperation annexed to the Treaty on European Union,
 - having regard to its resolution of 22 January 1993 on the setting up of Europol¹,
 - having regard to the joint action of 10 March 1995 concerning the Europol Drugs Unit²,
 - having regard to the report on the activities of the Europol Drugs Unit for 1994 (C4-0094/95),
 - having regard to its resolution of 11 February 1994 on criminal activities in Europe³,
 - having regard to the communication from the Commission to the Council and the European Parliament on the illicit traffic in radioactive substances and nuclear materials (COM(94)0383),
 - having regard to its resolution of 20 January 1994 on participation by the European Parliament in international agreements by the Member States and the Union on cooperation in the fields of justice and home affairs⁴,
 - having regard to its resolution of 19 May 1995 on the Europol Convention⁵,
 - having regard to the Convention signed by the Member States on 26 July 1995 pursuant to Article K.3 of the Treaty on the establishment of a European Police Office (Europol Convention) (C4-0521/95),
 - having regard to the report of the Committee on Civil Liberties and Internal Affairs and the opinions of the Committee on Economic and Monetary Affairs and Industrial Policy, the Committee on Legal Affairs and Citizens' Rights and the Committee on Budgetary Control (A4-0335/95),
- A. whereas basic civil liberties in democracies are increasingly threatened by crime,

¹ OJ No. C 42, 15.2.1993, p. 250

² OJ L 62, 20.3.1995

³ OJ No. C 61, 28.2.1994, p. 235

⁴ OJ No. C 44, 14.2.1994, p. 180

⁵ OJ No. C 151, 19.6.1995, p. 376

- B. whereas organised crime on an international scale is something new and threatening and whereas a new approach to fighting it is required,
- C. whereas nowadays criminal forms of profit-making economic activity which mirror legal forms are organized across frontiers, using modern technologies and management methods,
- D. whereas blackmail, corruption and terror may undermine the normal administrative action of the state and hence the democratic decision-making process,
- E. whereas one of the effective ways of fighting organized crime operating Europe-wide is through European police forces acting together throughout Europe,
- F. convinced that the agreement of the Member States on the Europol Convention is a necessary but not sufficient step towards fighting organised crime operating Europe-wide and other serious forms of international crime,
- G. regretting the fact that work on the Europol convention took an irresponsibly long period, during which other important forms of international police cooperation among the Member States were not appropriately pursued and the national governments thus failed in their duties towards their citizens,
- H. whereas in the interests of the effectiveness and efficiency of Europol the competence specified in Article 2 of the Europol Convention should not be extended, for the time being, to include the crimes linked in the annex to Article 2, but rather, after completion of an appropriate initial phase, their transferability should be considered and, if appropriate, decided upon,
- I. convinced that the data protection schemes in relation to the processing of personal data in datafiles pursuant to the Council of Europe Agreement of 28 January 1991 and Recommendation No. R (85) 15 of the Committee of Ministers of the Council of Europe of 17 September 1987 represent significant progress towards guaranteeing the right of self-determination in respect of information, and in the expectation that the Member States and Europol will apply the data protection provisions of the Europol Convention *mutatis mutandis* to the processing and utilization of data in files,
- J. convinced that the Europol Convention is one of the 'principal aspects of activities' within the meaning of Article K.6(2) of the Treaty on European Union (TEU),
- K. whereas, therefore, the Presidency should 'consult the European Parliament' on the Europol Convention and 'ensure that the views of the European Parliament are duly taken into consideration', pursuant to Article K.6(2) TEU,
- L. whereas the right to be consulted, as enshrined in Article K.6(2) TEU, must be respected before a decision is taken on the matter requiring consultation,

- M. convinced as a matter of inescapable logic that only if the European Parliament is consulted before a decision is taken can its views be duly taken into consideration,
- N. whereas, in accordance with the Treaty on European Union, the European Parliament should have been consulted before the final Council decision, and whereas in failing to do so the French Presidency has contravened the Treaty, so that the lawfulness of the Convention is already in doubt,
- O. convinced that there is a need for an interinstitutional agreement to be concluded between the Council and the European Parliament on the exercising of the rights of the European Parliament pursuant to Article K.6 TEU,
- P. having regard to the conviction that organized crime operating centrally should be opposed by a European police force operating centrally,
- Q. having regard to the conviction that in the medium term Europol should accordingly be given closely defined independent powers of investigation,
- R. convinced that provisional legal protection against acts of Europol should properly be the task of the Court of Justice of the European Communities,
- S. whereas the sovereignty of states is more likely to be diminished by the increase in organised crime than by the cooperation of the national police authorities of the Member States in a European Police Office,
- T. convinced that the information acquired through data-processing pursuant to the Europol convention will lead to a standard of sovereign behaviour in respect of which parliamentary accountability should involve not only the parliaments of the Member States but also the European Parliament, and convinced that even control over the present activity of the Europol Drugs Unit/Europol should involve not only the parliaments of the Member States but also the European Parliament,
1. Calls on the parliaments of the Member States
 - to embark upon ratification of the Europol Convention without delay,
 - to insist forcefully, as part of the ratification procedure, on the introduction of powers for the European Court of Justice to give preliminary rulings,
 - to ensure that Europol is able to start work as soon as possible;
 2. Expects, in accordance with the conclusions of the European Council of Cannes, an agreement to be reached no later than the meeting of the European Council in June 1996 on the powers of the Court of Justice of the European Communities for requests for preliminary rulings in the event of a legal dispute between a citizen and Europol;
 3. Calls on the Member States to commence forthwith the negotiations on the implementing provisions pursuant to Article 45(4) of the Europol Convention and to adopt the legal acts as soon as possible so that there is no delay in the Convention entering into force;
 4. Calls on each Member State to take immediate action to include in its national legislation on the processing of personal data in datafiles the measures required to guarantee the data protection standard set out in the Europol Convention;

5. Calls on the Council to ensure that the actions of Europol are subject to investigation by the European Ombudsman;
6. Calls on the Council to consult the European Parliament on the following matters pursuant to Article K.6(2) TEU and to give due consideration to its views:
 - the decision on instructing Europol to deal with terrorist activities pursuant to Article 2(2), third subparagraph, of the Europol Convention before the expiry of the period specified therein;
 - the decision to instruct Europol to deal with other forms of crime listed in the annex to the Europol Convention;
 - the implementing rules for data files pursuant to Article 10(1), last sentence, of the Europol Convention;
 - the rules to be observed by Europol pursuant to Article 10(4), last sentence, of the Europol Convention;
 - the general rules for the communication of personal data by Europol pursuant to Article 18(2) of the Europol Convention;
 - the activity reports of the joint supervisory body pursuant to Article 24(6) of the Europol Convention,
 - the rules concerning the agreements to be concluded by Europol pursuant to Article 26(3) of the Europol Convention;
 - a decision by the Council on the dismissal of the Director and the Deputy Directors pursuant to Article 29(6) of the Europol Convention;
 - the staff regulations pursuant to Article 30(3) of the europol Convention;
 - the rules on confidentiality pursuant to Article 31(1) of the Europol Convention;
 - the budget pursuant to Article 35(5) of the Europol Convention;
 - the financial regulation pursuant to Article 35(9) of the Europol Convention;
 - the audit report pursuant to Article 36(3) of the Europol Convention;
 - the decision on the discharge pursuant to Article 36(5) of the Europol Convention;
 - disputes between Member States on the interpretation or application of the Convention pursuant to Article 40(1) of the Europol Convention;
 - the protocol on privileges and immunities pursuant to Article 41 of the Europol Convention;

- amendments to the Convention pursuant to Article 43(1) of the Europol Convention;
 - a decision on the definitions of forms of crime contained in the Annex pursuant to Article 43(3) of the Europol Convention;
7. Calls on the Council to submit to the European Parliament, pursuant to Article K.6(2) TEU, the reports to be submitted by the Management Board pursuant to Article 28(10) of the Europol Convention;
 8. Calls for the European Parliament to be consulted on the appointment of the Director and the Deputy Directors, pursuant to Article 29 of the Europol Convention, and for its views to be duly taken into consideration;
 9. Calls for the special report, which is to be submitted to the European Parliament pursuant to Article 34(1) of the Europol Convention, to be presented by the Director and to reflect not only the current work of Europol but also the activities and decisions of all its bodies;
 10. Expects the European Parliament to be informed not only of the special report pursuant to Article 34 of the Europol Convention but also of the activities of Europol pursuant to Article K.6(2) TEU and to be consulted at all times on the principal aspects of Europol's activities;
 11. Calls for the words 'and its opinions shall be duly taken into account' to be inserted in Article 34(1), second sentence, of the Europol Convention;
 12. Calls for the Europol Convention to be reviewed no later than two years after it enters into force with a view to transferring investigatory powers to Europol within the scope of its competences pursuant to Article 2 of the Europol Convention;
 13. Calls for a European Police Office with operational powers to be subject to the instructions of a member of the European Commission;
 14. Calls for a European Police Office operating Europe-wide to be accountable to the European Parliament, thereby supplementing parliamentary scrutiny by the national parliaments;
 15. Instructs its President to forward this resolution to the Council, the Commission and the governments and parliaments of the Member States.

B
EXPLANATORY STATEMENT

1. The European security situation

In Europe, the number of recorded crimes has been increasing for years, while the clear-up rate has simultaneously been falling. Crime thus appears constantly to be gaining ground, while crime-fighting agencies fight an increasingly hopeless battle against it. Many police authorities are inadequately equipped in terms of staffing and material resources. When it comes to technical resources, in particular, they lag behind the criminals. There is a widespread feeling, among both police officers and the general public, that the rising crime wave is increasingly simply being managed, with no realistic prospect of it being curbed.

The public is also disturbed to note not only that crime is increasing, but that there is also a greater readiness to use violence on the street and in public places. The fear of crime has long since begun to change personal habits, and thus restrict the personal freedom of citizens. In cities there are parts which have become no-go areas for ordinary citizens after dark. At night public transport, such as underground trains, is virtually surrendered to young thugs. Many people have the perception that the State no longer adequately fulfils one of its fundamental duties, that of providing protection against crime and violence.

There are fateful implications for democracies and the rule of law. The private security sector is booming. In the Federal Republic of Germany, for example, private security firms now employ as many people as the police. Anyone with enough money can buy the security that the State is no longer capable of guaranteeing. This developing two-tier society, where domestic security is concerned, cannot but shake confidence in democracies.

The **new forms of crime** give particular cause for concern. The list is headed by organized crime, i.e. the carrying-out of crimes on a large scale, on the basis of military-style planning, across national borders, using the most up-to-date logistics and communications, increasingly based on corruption and, following successful money-laundering, using capital which is reinvested in the normal economy and is thus available to fund further criminal activity. Systematic corruption, in particular, for instance in the award of public-sector contracts and licences, threatens to undermine the proper decision-making processes of the State. Organized crime appears to be attempting to create its own space, where the power of the State, based on the rule of law and democratic legitimacy, cannot reach.

2. Europol - the European response to organized crime

The establishment of a European Police Office as a matter of common interest to the Member States, which was enshrined in the Maastricht Treaty, provides the requisite answer to this development. Europol will improve cooperation between those authorities in the Member States which are responsible for preventing and combating unlawful drug-trafficking, trafficking in nuclear and radioactive substances, crime associated with smuggling, trade in human beings, motor vehicle crime, terrorism and other serious forms of international crime.

Admittedly, Europol is being set up without its own executive powers, and is thus limited to the functions of a central criminal investigation unit, but it will nonetheless revolutionize the fight against crime in Europe. Europol will give the police authorities in the Member States on-line access, via their respective national units, to all the investigative data held on national information systems. Information for a specific investigation has hitherto taken weeks to obtain, owing to legal obstacles, bureaucratic processing, authorization procedures at several levels and the need for translation into and out of foreign languages. The central collation and evaluation of investigative data will put an end to parallel investigations being carried out in the Member States into the same offenders or the same criminal organizations without one national authority knowing about the others. Europol will satisfy the crying need for the coordination of investigations into criminal organizations which operate internationally. Investigations into extensive international criminal organizations have assumed such a scale that the police authorities in the Member States can deal with them far more successfully by combining their forces and concentrating their efforts at European level than by going it alone nationally.

Europol is accepted by the citizens of Europe. They realize that there must be a Europe-wide response to criminal gangs who operate Europe-wide. Consequently, there are far fewer reservations about a European police agency than, say, about a single European currency. The creation of a European Police Office engenders public expectations rather than mistrust. The citizens of Europe fail to see why crime should flourish unhindered, while bureaucratic obstacles or scarcely comprehensible reservations about sovereignty are put in the way of a European Police Office. Criminal organizations have an annual turnover which is comparable to the national budget of some smaller European States. It is obvious that organized crime poses far more of a threat to the sovereignty of European States than the hand-over of a minuscule degree of sovereignty to an effective European police agency.

3. Evaluation of the Convention

(a) Objectives and tasks

The Convention creates the legal foundations for establishing Europol. It lays down Europol's objectives and tasks, the position and tasks of the national units and national liaison officers providing the link between Europol and the relevant authorities in the Member States, the establishment of the computerized information system and access thereto, data protection rules for the use of data held by or to be transmitted by Europol, institutional matters concerning the management of Europol, financial and staff regulations, the involvement of the European Parliament and rules on liability and judicial control of Europol's actions.

(b) Data protection

The rules on data protection are a major step forward regarding the protection of the 'right of self-determination in respect of information' in Europe. They are based on the principles of the Council of Europe Convention of 28 January 1981 and the Recommendation of the Committee of Ministers of the Council of Europe of 17 September 1987 concerning the use of personal data in the police sector. In Article 14 of the Convention, the Member States undertake to incorporate those data protection principles into national law by the time the

Europol Convention enters into force. The level of data protection in Europe will be substantially enhanced thereby.

The rules protecting data in paper files are not comparable to those for data in data files. However, Article 22(3) grants any person the right to demand the correction or destruction of incorrect data concerning him or her in paper files. In a declaration, Germany and Austria have expressed their expectation that, in processing and using data in paper files, Europol and the Member States will apply the Convention's data protection rules by analogy. This expectation should be explicitly reaffirmed by the European Parliament.

(c) Absence of ECJ jurisdiction and ratification

The most glaring shortcomings of the Europol Convention are the lack of agreement on the powers to be granted to the Court of Justice of the European Communities and the lack of involvement of the European Parliament.

In the event of a legal dispute between a citizen and Europol, the way is open for recourse to national courts. The European Council intends to settle the question of empowering the Court of Justice to issue preliminary rulings at its meeting in June 1996, at the latest.

Meanwhile, it has been said on a number of occasions that the Europol Convention should not enter into force until provisions concerning the ECJ are in place. There are reports of the unwillingness of the Member States' national parliaments to initiate the ratification process until the question of ECJ jurisdiction has been settled.

It is estimated that it will take between 18 months and two years for national ratification of the Europol Convention to be completed. If it is also assumed that the European Council will find it difficult to reach agreement on the powers to be granted to the ECJ before it meets in Rome in June 1996, the Convention's entry into force, and thus the time when Europol starts operating, will be delayed by a further three years. It should not be forgotten that more than three years have already gone by since the decision was taken to set up the European Police Office. Finally, it is a moot point whether an agreement will actually be reached, given the UK resistance to granting jurisdiction to the ECJ. The entire Europol project is at risk if it is made dependent on settling the ECJ issue.

There are two respects in which the powers of the European Court of Justice regarding the Europol Convention are important: first, the ECJ can provide individual legal protection in the event of legal proceedings between a citizen and Europol, and secondly, the ECJ could rule on disputes between the Member States regarding the interpretation or application of the Convention.

It should be pointed out that, even with no ECJ jurisdiction, citizens are not without the protection of the courts if they come to the notice of Europol. There is no question but that all citizens may have recourse to their national courts if they feel that their rights have been infringed by Europol's activities. Citizens of the European Union are thus no worse off, even without the question of ECJ jurisdiction having been settled, than they are anyway with regard to legal protection against the actions of national authorities in their own countries.

There is also a provision on disputes concerning interpretation, in Article 40 of the Convention. Until this becomes the responsibility of the ECJ, the Member States concerned must reach agreement on how they wish to resolve questions in dispute.

Consequently, if it is borne in mind that every Union citizen, regardless of the lack of ECJ jurisdiction, has the option of recourse to national legal protection against the actions of Europol, and that the Europol Convention also makes provision for the resolution of disputes concerning interpretation, it seems unjustified to allow the Convention as a whole to fail on account of the absence of provisions on ECJ jurisdiction. The concomitant disadvantages far outweigh the shortcoming of the lack of a settlement of the ECJ issue. Europol's operational start-up, which is urgently needed, would be postponed for years, or even basically prevented. Organized crime would be able to continue to benefit from greater freedom of movement in Europe without encountering decisive European action to combat it. Given the opportunities that Europol offers for fighting crime effectively, failure to get it up and running would mean ignoring Union citizens' justified security needs, and would thus be politically irresponsible.

Your rapporteur therefore expressly urges that the process of ratification of the Europol Convention by the national parliaments should start without delay and be completed as swiftly as possible, so that Europol can start operations at the earliest opportunity. At the same time, the European Council is called upon equally urgently to settle the question of the jurisdiction of the European Court of Justice no later than its meeting in June 1996.

(d) Right of the European Parliament to be involved

The rights of the European Parliament are covered extremely inadequately in the Europol Convention. Article 34 merely requires the Presidency to forward a special report each year to the European Parliament on the work of Europol. In addition, the European Parliament is to be consulted should the Convention be amended in any way. This provision is clearly modelled on Article K.6 of the Treaty on European Union. The European Parliament is thus merely 'informed' about Europol's activities. This arrangement cannot be accepted as providing adequate parliamentary control over the European Police Office.

This assertion is not contradicted by the fact that the rights of control of national parliaments remain unaffected. The activities of the national units and of the national liaison officers at Europol are subject to parliamentary scrutiny by national parliaments.

However, the example of files for the purposes of analysis covered by Article 10 of the Convention reveals how Europol's activities can assume a form which is no longer susceptible to national parliamentary control. The analysis of personal data from various national information systems produces findings which can no longer be attributed to the actions of a specific analyst. The collation of personal data from different national sources, the combination thereof in a variety of different ways, and finally the gaining of knowledge from this process which in turns leads to new avenues of investigation and sovereign police action - this process is not covered even by the full panoply of national parliamentary scrutiny. The principle of democratic control over sovereign action makes it essential to supplement the requisite scrutiny by national parliaments by control by the European Parliament.

Accordingly, the European Parliament's involvement should not remain limited to being informed, pursuant to Article 34 of the Convention, but should basically take the form of consultation. Under general parliamentary law, consultation means that the party to be consulted must have the opportunity to deliver its opinion prior to any decision. The consulting party is not bound to follow that opinion in its decision, but is required to respond to it and give proper consideration to the reasons for it. Consequently, the European Parliament should always be consulted if the Council takes decisions based on the Europol Convention according to the procedure laid down in Title VI of the Treaty on European Union.

This applies not least to the appointment of Europol's Director and Deputy Directors and to its budget and financial regulation. The legitimacy of Europol's management will also be visibly enhanced in the eyes of the public if the European Parliament is appropriately involved in its appointment. Europol's establishment in public life can only benefit if the European Parliament is actively involved in debating its budget, too, as part of the consultation process, rather than passively being informed about it.

The rights of the European Parliament pursuant to the second paragraph of Article K.6 of the TEU were overlooked in the drafting of the Europol Convention. Your rapporteur explicitly and emphatically criticizes this. The European Parliament was neither kept appropriately informed about the progress of negotiations nor consulted prior to the decision of the European Council in Cannes. It therefore had no opportunity to express an opinion prior to the Council's decision. Due consideration of Parliament's views, which is explicitly required of the Presidency by the second paragraph of Article K.6 of the TEU, was thus ruled out from the start. Such behaviour infringes the rights of the European Parliament. If it were to prove impossible to reach agreement with the Council or the Council Presidency on Parliament's right to be involved, a judicial solution would have to be considered. The European Parliament should reserve the right to take the appropriate steps.

(e) An interinstitutional agreement

However, the conclusion of an interinstitutional agreement between the Council and Parliament would be preferable. This would establish how the European Parliament's right to be informed and consulted on matters coming under the third pillar of the TEU can be exercised in detail and, in particular, which activities associated with cooperation in the fields of justice and home affairs are subject to the provision of information or consultation.

4. The further development of Europol

If the European Union is to combat crime successfully, it must deploy its arsenal according to the threat facing it. The most dangerous form of crime, namely organized crime operating world-wide, is centrally controlled and operates in a decentralized manner across borders. Police investigations which focus solely on the decentralized activities of organized crime have little prospect of success. Exposing local activities without uncovering their links and tracing them back to the control centre cannot strike a decisive blow against organized crime.

What is needed instead is central direction of the fight against crime that operates internationally. The coordination of investigations into, say, criminal organizations operating throughout Europe must be followed by the coordination

of Europe-wide operational action. Centrally directed, simultaneous operations throughout the European Union, such as searches, raids and arrests, as well as the organization of what are known as controlled deliveries of illegal goods, whereby the police carry out undercover monitoring of transport operations across Europe in order to discover the key figures and control centres of organizations, are the requisite police response to the structure of organized crime in Europe.

For this reason Europol must not remain a data exchange and analytical unit for any length of time. In the long term, the European Police Office needs its own investigative and operational powers. The conditions must be created for Europol to develop into a European task force actively combating crime in close cooperation with national police authorities. It is therefore advisable for Europol to be brought within the scope of Community law.

This does not mean establishing a 'European FBI' with wide powers. In accordance with the spirit of subsidiarity, Europol should only assume responsibility for a few carefully defined criminal activities with a European dimension and, moreover, only act in close consultation with national police authorities. Giving Europol operational powers means establishing that combination of investigative and operational competence which is a matter of course for any police force.

O P I N I O N

of the Committee on Economic and Monetary Affairs and Industrial Policy

Letter from the chairman of the committee to Mr MARINHO, chairman of the Committee on Civil Liberties and Internal Affairs

Brussels, 19 December 1995

Subject: Draft Council Act drawing up the Convention based on Article K.3 of the Treaty on European Union on the establishment of a European Police Office (Europol) (C4-0250/95 - 7965/95(DOT))

Dear Mr Marinho,

Organized crime, apart from its direct negative effects on the safety of individuals and property, has a harmful influence on a number of aspects of an economic nature (loss of tax revenue, wasted public funds or non-optimal investment decisions as a result of corruption, negative effects of insecurity on certain economic sectors such as tourism, direct or indirect additional costs for productive activities, etc.).

In a single market where the movement of the perpetrators and products of criminal activities is facilitated to the same degree as that of individuals and goods in general, a response at European level is required.

The Committee on Economic and Monetary Affairs and Industrial Policy therefore welcomes the establishment of Europol and hopes that Parliament will pronounce itself in favour of its speedy ratification, whatever the situation as regards the jurisdiction of the Court of Justice of the European Communities. On the latter issue, the committee is in favour of conferring upon the Court of Justice of the European Communities powers of last resort interpretation.

The processing of personal data is an important item of the Europol Convention. The convention provides for a system of information access based on national laws. The Committee on Economic and Monetary Affairs and Industrial Policy points out that these will have to be brought into line with Parliament and Council Directive 95/46/EC of 24 October 1995, recently adopted by the Community, on the protection of individuals with regard to the processing of personal data and the free movement of such data. The committee thus deems it appropriate to recommend to the Committee on Civil Liberties and Internal Affairs that the following conclusion be included:

'invites the joint supervisory body to ensure that Articles 19 to 21 are applied in accordance with the provisions of Directive 95/46/EC whenever possible under the terms of Article 19(3) subparagraph 2 of the Convention'.

Yours sincerely,

Karl von Wogau

The following took part in the vote: von Wogau, chairman; Katiforis and Théonas, vice-chairmen; Areitio Toledo, de Brèmond d'Ars, Carlsson, Christodoulou, Cox (for Gasòliba i Böhm), Friedrich, Haug (for Billingham), Hautala, Herman, Hoppenstedt, Kestelijn-Sierens, Palacio Vallelersundi (for Langen, pursuant to Rule 138(2)), Pérez Royo, Read, Rehn (for Larive), Soltwedel-Schäfer, Thyssen, van Velzen (for Cassidy) and Watson.

O P I N I O N

(Rule 147 of the Rules of Procedure)

of the Committee on Legal Affairs and Citizens' Rights
for the Committee on Civil Liberties and Internal Affairs
Draftsman: Mrs Anne-Marie Schaffner

At its meeting of 17 and 18 July 1995 the Committee on Legal Affairs and Citizens' Rights appointed Mrs Schaffner draftsman.

At its meetings of 20, 21 and 22 November and 11 December 1995 it considered the draft opinion.

At the last of these meetings it adopted the conclusions as a whole unanimously.

The following were present for the vote: Casini, chairman; Rothley, vice-chairman; Schaffner, draftsman; Cot, Florio, Gebhardt, Hlavac, Janssen van Raay, Mosiek-Urbahn, Ullmann and Wijsenbeek.

I. INTRODUCTION

1. The Convention establishing Europol was signed by the 15 EU Member States on 26 July 1995 in Brussels. It has now been submitted for ratification, acceptance or approval by the signatory Member States in accordance with their respective constitutional requirements and will come into force on the first day of the third month following the lodging of the final instrument of ratification, acceptance or approval.
2. The signature of the Convention follows on from the agreement reached at the Cannes European Council of 26 and 27 June 1995, the conclusions of which state that:

'The European Council noted with satisfaction the agreement on the Convention establishing Europol, a significant instrument for cooperation between States in the interests of reinforcing the security of their citizens. It recommends Member States to do their utmost to ensure that this Convention can be formally adopted and applied as soon as possible after ratification by the national parliaments.'

3. The signature of the Europol Convention brings to a close a process comprising various stages, the origins of which go back to the Luxembourg European Council of 28 and 29 June 1991, which called for practical proposals to be drawn up for the establishment of Europol. The Trevi III Group took responsibility for the matter and the following results have been achieved:
 - on 3 December 1991, approval by the Trevi Group of the establishment of Europol in successive stages, the first being the setting up of the Drug Unit¹;
 - establishment, within the Trevi Group, of an Ad Hoc Europol Group, the eight subgroups of which are considering the form which an international convention of the subject could take, and also the practical arrangements for the running of Europol;
 - decision taken by the Ministers of the Trevi Group on 11 and 12 June 1992 to set up a 'project team' responsible, with effect from 1 September 1992, for setting up the Drug Unit (i.e. a structure enabling 12 liaison officers to exchange information on drugs trafficking in real time);
 - the Europol Drug Unit came into operation on 1 January 1994 and the Trevi group is already planning to extend its powers to the fight against terrorism and organized crime;
 - police cooperation, including 'the organization of a Union-wide system for exchanging information within a European Police Office (Europol)' is now covered by the Treaty on European Union, in particular by Title VI thereof, entitled 'Cooperation in the fields of justice and home affairs' (see in particular Article K.1-9).

¹ European Drug Intelligence Unit (EDIU).

II. MATTERS RELATING TO THE CONVENTION

4. Without going into detail over the substance of the Convention (since Parliament is not significantly involved in the process leading to the implementation thereof) it may nonetheless be useful to consider certain aspects relating to the nature of the Convention, the democratic and judicial monitoring of Europol and the protection of personal data.

A. The nature of the convention

5. The Council Act drawing up the Europol Convention has been adopted on the basis of Article K.3(2)(c) of the TEU¹, in accordance with which the Council may, 'without prejudice to Article 220 of the Treaty establishing the European Community, draw up conventions which it shall recommend to the Member States for adoption in accordance with their respective constitutional requirements'. The convention in question is therefore an international one, the only particularity of which - by comparison with international conventions in general - is that it is open to accession only 'by any State that becomes a member of the European Union'.
6. This is in accordance with the nature of the third pillar, under the provisions of which the areas covered by Article K.1 of the TEU are reserved for intergovernmental cooperation. Even though in certain areas - in particular those under Article K.1(1) to (6) - both the Member States and the Commission have the right of initiative, this is not sufficient to 'communitize' decision-making procedures and, in any case, the area to which the Convention relates - i.e. police cooperation - is one of those in respect of which the initiative lies solely with the Member States.
7. 'Communitization' of certain third-pillar activities is still possible under Article K.9 of the TEU, by means of a unanimous Council decision subject to ratification by the Member States, the aim of which would be to apply Article 100c of the TEU. However, even in such a case the areas concerned would still be those laid down in Article K.1(1) to (6), which excludes judicial cooperation in criminal matters, customs cooperation and police cooperation.
8. The Europol Convention therefore comes under the third pillar, which features the establishment of mechanisms for institutionalized intergovernmental cooperation. The virtual 'communitization' provided for in Article K.9 is excluded in the case of police cooperation because of the lack of harmonization in the criminal and judicial procedures applied in the various Member States.

B. Democratic control of Europol:

9. Despite the fact that third-pillar policy mainly involves inter-governmental cooperation, Parliament is nonetheless involved in the implementation thereof, in particular by means of Article K.6 of the TEU. The second paragraph of this article stipulates that 'the Presidency shall consult the European Parliament on the principal aspects of activities in the areas referred to in this Title and shall ensure that the views of the European Parliament are duly taken into consideration'. The first paragraph requires

¹ Treaty on European Union

the Presidency and the Commission to inform Parliament regularly 'of discussions in the areas covered by this Title'.

10. Although it is not very clear whether, in this particular case, Parliament is being consulted or merely informed, it must be said that the situation would be essentially the same in either case for the simple reason that the term 'consultation' does not seem to mean the same thing as Parliament's right to be consulted, as derived from the provisions of the Treaty establishing the European Community. The reasons for this are as follows:
 1. Title VI does not contain any Community decision-taking mechanisms;
 2. Article K.6 makes no reference to consultation of Parliament by the Council but merely states that 'the Presidency shall consult the European Parliament', and this form of consultation clearly does not constitute a substantive condition without which the act adopted would be invalid, which reveals a difference in kind by comparison with the consultation provided for in the Community sphere (Article 138b);
 3. Judicial monitoring - in cases where Parliament were to reproach the Council for not having 'consulted' it properly - is not possible since the treaties do not acknowledge the Court of Justice as having any powers in respect of Title VI of the TEU, the only exception being the one provided for in Article K.3(2)(c), third subparagraph, to which we shall return in due course.
11. Parliament, which has only a limited role as regards police cooperation, is not, however, excluded from the provisions of the Europol Convention, Article 34 of which allows for Parliament to be consulted if amendments are to be made to the text and states that an annual report will be forwarded on the work of Europol. This provision, although inadequate, nonetheless approximates to the kind of democratic control which must be exercised in respect of Europol's activities and those of its constituent bodies.
12. Above and beyond the responsibilities conferred on them at the Convention ratification stage the parliaments of the Member States may carry out monitoring at national level. Thus in areas other than those relating to the first pillar the best way of exercising democratic control lies in a partnership between the European Parliament and the national parliaments¹.
13. Such a partnership, carried on with due respect for the powers and responsibilities of each party, may assume various forms (regular meetings of specialist committees in the form of a round table or as a smaller grouping, inter-parliamentary committees, etc.) and it would be desirable if these could be noted by the IGC, one of whose priorities is to deepen the Union from the democratic point of view and bring it closer to the people.

¹ European Parliament report on the functioning of the TEU, 17 May 1995, A4-0102/95.

C. Judicial control over Europol:

14. Several Member States have insisted that the Europol Convention should fall within the jurisdiction of the Court of Justice, which could be called upon to interpret the provisions of the Convention and settle any dispute concerning the application thereof. The possibility of including such an arbitration clause is indeed specifically provided for in Article K.3(2)(c) of the TEU and is actually used in the Convention, Article 40 of which empowers the Court to settle disputes between Europol and its staff.
15. The same article states that disputes relating to interpretation of the Convention will initially be considered by the Council. In cases where no solution has been found by the end of a six-month period the dispute will automatically be submitted to the Court of Justice. If it proves impossible to reach an agreement on the powers of the Court, including in the case of referrals for preliminary rulings, the Member States have agreed to settle this matter during the June 1996 European Council meeting at the latest.
16. The problems relating to judicial control were previously raised when the Schengen Convention ratification procedures were in progress. Certain parties took the view that, since the Convention did not subject its executive body - the Executive Committee - to judicial control, the convention was not contrary to their Constitution¹. Others took the view, however, that the absence of a judicial mechanism initially delayed ratification², and the national parliament concerned in the end only agreed to ratify the convention if it was allowed to exercise prior parliamentary control over the Executive Committee's decisions. This means that the parliament in question will in future have two weeks in which to accept or reject the decisions which the Executive Committee set up under the Schengen Convention envisages adopting unanimously. Such situations are likely to recur when the Europol Convention is ratified.

D. Protection of personal data

17. The automated Europol information system will include personal data and the Convention thus strives to surround the gathering and processing of such data with guarantees designed to protect individual freedoms (right of access and rectification, data correction periods).
18. Data protection is covered by national law. The harmonization directive relating to the protection of persons as regards the processing of personal data will not apply since data processing in respect of activities which do not fall within the scope of Community law, such as those referred to in Titles V and VI of the TEU, is expressly excluded. On the other hand the Convention requires the Member States to provide a level of protection which

¹ See the French Constitutional Council's decision No. 91-294 DC of 25 July 1991, Official Journal of the French Republic, 27 July 1991, p. 10001. If the Executive Committee's decisions had no direct effect it is the action taken by the French authorities in response to those decisions which would be subject to control by the French courts.

² This was the case with the Netherlands Council of State, which delivered a negative opinion on 23 April 1991 (see Bull. Europe No. 5759, 27 June 1992, p. 14).

is at least as good as that established in the principles of the Council of Europe Convention of 28 January 1981 and to take into account Recommendation R(87) 15 of the Council of Europe's Committee of Ministers on the use of personal data by the police. Europol is also required to observe these principles.

19. The Convention also lays down conditions for the forwarding of data to third countries or bodies, which are merely required to have an adequate level of data protection. In this connection it would have been preferable to demand an equivalent level of protection, especially since Europol will have a substantial margin for discretion when it comes to determining what constitutes an adequate level of protection.
20. Lastly, a dual-level control system will be established under the Convention: in addition to the national authorities responsible for monitoring of the legality of data forwarded by the Member States there will be a joint authority responsible for monitoring the data gathered by Europol.

III. CONCLUSIONS

1. Over the years police cooperation, which was originally conceived as a way of compensating for the abolition of border controls, has become a common objective of all the Member States;
2. In this regard the European Police Office, which organizes the exchange of information between national police forces on a multilateral basis, represents a positive response to the concerns of the people of Europe, who expect effective action to be taken against drug trafficking, terrorism and other forms of international crime;
3. The ratification procedures should therefore be initiated as soon as possible in each of the Member States so as not to hinder the speedy establishment of Europol;
4. In accordance with the Treaty on European Union, Europol in its current form falls within the scope of intergovernmental cooperation and its powers are limited to those of a central police information exchange;
5. However, the necessary arrangements should be made in the near future to increase judicial control (including a role for the Court of Justice) and democratic control in respect of Europol's activities and those of its constituent bodies.

O P I N I O N

(Rule 147 of the Rules of Procedure)

of the Committee on Budgetary Control
for the Committee on Civil Liberties and Internal Affairs
Draftsman: Mrs Diemut Theato

At its meeting of 26 April 1995 the Committee on Budgetary Control appointed Mrs Theato draftsman.

At its meeting of 23 November 1995 it considered the draft opinion.

At the latter meeting it adopted the conclusions as a whole by 9 votes to 1, with 6 abstentions.

The following took part in the vote: Diemut R. Theato, chairman and draftsman; Blak and McCartin, vice-chairmen; Bardong, Ewing, Fabre Aubrespy (for Jean-Pierre), Garriga Polledo, Hoff (for Colom I Naval), Kellett Bowman, Kjer Hansen, König, Mulder, Pasty, Tappin, Tomlinson and Wemheuer.

EXPLANATORY STATEMENT

I. Signature of the Europol Convention; provisions of the Convention

On 26 July 1995 the representatives of the Member States of the Union signed a Convention establishing a European Police Office (Europol), which the Council has recommended that the Member States ratify under the terms of Article K.3 of the Treaty on European Union.

The purpose of the Europol Convention is to improve the effectiveness of action by and cooperation between the national bodies responsible for combating terrorism, drug trafficking and other serious forms of international crime covered by the Convention (trafficking in nuclear substances, illegal immigration networks, etc.: Article 2(2). Other forms of criminal activity, among those listed in the Annex to the Convention, may be added to those dealt with by Europol by a decision of the Council acting unanimously (Article 2). Europol will pursue the above objectives (Article 3):

- by gathering and analysing information which is then made available to the national authorities (possibly by means of computerized databases);
- by encouraging the exchange of information between Member States;
- by providing supplementary services designed to improve the effectiveness of the relevant departments in the Member States (advice, strategic information, research, etc.).

The interface between Europol and the relevant national departments will be provided by national units, which will be responsible for:

- providing and updating the information available to Europol;
- using such information for the benefit of the relevant national departments.

Each national unit will second a liaison officer to ensure the flow of information between the unit and Europol, in both directions, and to act in an advisory capacity vis-à-vis Europol staff.

II. The fight against fraud and protection of the Community's financial interests: the possibility of liaison with Europol

For the time being, Europol's work will not concern protection of the Community's financial interests. This is entirely logical: the Community's interests need to be protected in a Community context at regulatory and operational levels and at that of resources (databases, etc.). Neither the traditional horizontal intergovernmental cooperation, nor cooperation under the third pillar of the Maastricht Treaty (justice and home affairs) thus provides a suitable framework for such work. This consideration is consistent with the final recital of the Convention, according to which the Europol activities covered by the Convention are to be carried out without prejudice to the powers of the European Communities.

Two further points nonetheless need to be made:

1. Europol does not at present deal with fraud, but could do so in future (see the Annex to the Convention);
2. such fraud should not relate to the Community budget, for the reasons explained above, but might be committed by persons (international criminals, transnational corporations) who were also responsible for fraud against the Community.

It follows from the above that functional liaison could be set up between Europol and those responsible for combating fraud against the Community budget. In that case the exchange of data, strategic information and assessments between the two sides would be necessary. This possibility is also provided for by the final recital, which stresses that Europol and the European Communities have a mutual interest, in the context of the European Union, in establishing forms of cooperation enabling each to carry out its respective functions.

III. Instruments for cooperation between the Community and Europol to protect the Community's financial interests

Although the final recital of the Convention advocates cooperation between the Community and Europol, there is no provision for any institutionalized form of cooperation, particularly where fraud is concerned. Europol actually has relations only with the national units, via the liaison officers (Articles 4 and 5). The right of access to the information system is solely a matter for the Member States' liaison officers and Europol staff. With the exception of the European Parliament's right to be informed about the Office's activities (Article 34), there is no provision for any relations with Community bodies. Europol's own budget, moreover, is based solely on national contributions (Article 35).

Genuine cooperation with the Community, particularly with regard to the legal protection of the Community's financial interests, would therefore require the following:

- the Community to become a partner in the exchange of data, advice and strategic information that constitute Europol's activity;
- the Community, in consequence, to set up a liaison unit, which might be provided by the Unit for the Coordination of Fraud Prevention (UCLAF);
- the Community's liaison officers to have access to the computerized information system.

Given that the points set out under A., B. and C. would have to be dealt with by a future modification of the Convention, a reorganization of Europol's sources of funding, entailing a contribution from the Community budget, would be necessary. Such a reorganization would enable the Community authorities responsible for monitoring the execution of the budget to exercise oversight over this key aspect of Union activity.

IV. Conclusions

On the basis of the above considerations, the Committee on Budgetary Control requests the Committee on Civil Liberties and Internal Affairs to include the following paragraphs in the resolution on the establishment of a European Police Office (Europol):

(The European Parliament)

A. Deplores the fact that Europol will initially not deal with fraud against the Community budget, and calls for such a function to be added subsequently;

B. Considers that cooperation between Europol and the Community might take the form, in the specific area of fraud committed against the Community, of enhanced institutional liaison between them via:

- the forwarding by Europol of any information concerning or indication of fraud against the Community budget which Europol might have acquired within the framework of its activities;
- the development of institutional contacts between the Commission departments concerned with combating fraud on the one hand, and Europol and the United Nations on the other hand;
- the establishment of a Community unit to act as the interface between Europol and the Commission departments concerned with combating fraud;
- the appointment of Community liaison officers to represent the Community unit at Europol;
- the conferment on the Community liaison officers of all the attributes of national officers, including the right to enter data directly into and conduct data searches on the computerized information system;