



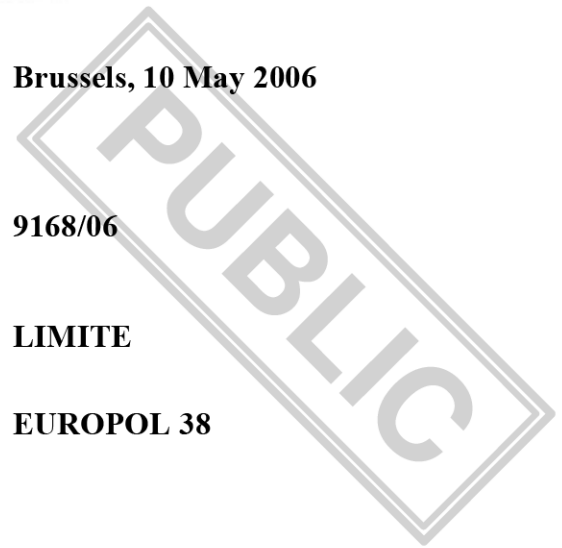
**COUNCIL OF
THE EUROPEAN UNION**

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LIMITE

EUROPOL 38



NOTE

from:	Presidency
to:	Article 36 Committee
No. prev. doc. :	8234/06 EUROPOL 27
Subject :	Europol: the way forward towards more efficiency and accountability - draft Council conclusions

1. It is the strong will of the Council to further enhance the effectiveness of the European Police Office and to increase transparency so that maximum benefit for the Member States' law enforcement authorities can be derived from Europol's further advancement. This will require more flexibility within the Europol corporate governance system to be achieved by adapting the Europol legal basis to state of the art legislation possible under the Treaty on the European Union.
2. The present conclusions are based on a political discussion held in the framework of the informal Meeting of the Ministers of Justice and Home Affairs on the 12 to 14 January 2006 in Vienna, and the High Level Conference on "The Future of Europol" of 23 and 24 February 2006 followed by the 'Friends of the Presidency Group', which prepared the 'Options Paper on the Future of Europol'¹.

¹ Doc. 9184/06 EUROPOL 40

3. Europol as the EU's institutionalised answer to the Member States' wish to lift their co-operation to the operational level will soon celebrate its seventh birthday. The demand of Member States law enforcement authorities for participation in one of Europol's Analysis Work Files has been growing regularly. Similarly, the Europol Information System as one of the largest law enforcement systems has been put in place. And, with the OCTA Europol has opened the door to becoming a serious player in EU strategic crime analysis, policy advice and law enforcement prioritising mechanisms.

4. The fundamental structure of Europol is strong. Its main working method, supporting information exchange and intelligence analysis in a methodological manner, has emerged as a prerequisite for more efficient law enforcement cooperation.
 - Due to the transnational dimension of organised crime and terrorism, information exchange and intelligence analysis have emerged as the area where EU cooperation is at its strongest.
 - Organised crime and terrorism as the Member States' priorities need to be tackled in a proactive fashion and Europol's mandate is about both combating and *preventing* criminal activity.
 - Furthermore, it is increasingly accepted that efficient law enforcement action must be based on a strong legal basis and be subject to efficient control. Both are guaranteed within the framework of the Area of Freedom, Security and Justice.

5. The drawback of the in comparison 'old' age of Europol is that its legal basis, a convention, does not reflect state of the art legislation that is possible under the current Treaty on the European Union.

Attempts by the Council to make Europol even more efficient were halted by the many years long ratification process for changes of the Europol Convention. In comparison to younger EU agencies like FRONTEX or CEPOL this becomes an obvious and unnecessary disadvantage. With a view to the required level of preparedness for future demands on EU level, the time frame for changing the Europol legal framework is unacceptable. A delay of more than five years for putting a minor change to Europol's mandate into effect is clearly not tolerable.

In the absence of a change to EU primary law the legal basis for Europol, including the modalities for amending it, need to be changed by bringing Europol up to date with the provisions of the current Treaty of the European Union.

6. The present priority must be to allow Europol to keep growing on the basis of its current institutional set up, particularly with regard to the implementation of the yet to be ratified three protocols amending the Europol Convention. To support the further growth of Europol a number of quick wins were identified that can be implemented quickly and within the scope of Europol's ongoing work.
7. In addition, and even though the current priority must be to let Europol continue its progression within the confinements of the Europol Convention, a conscientious outlook to future challenges of EU law enforcement cooperation must recognise that it must become easier to adapt Europol's legal basis to contemporary and future needs. This is also required with a view to possible developments in the area of a new EU primary law.
8. The Council calls upon the Member States to finalise the ratification process of the Protocols amending the Europol Convention by the end of 2006. The Presidency is asked to report to the Council in December 2006 on the state of ratification.
9. The Council calls upon the Member States, the Europol Management Board and the Europol Director to carry out, within their specific competences, the necessary arrangements for the implementation of the three protocols by the end of 2006. The Article 36 Committee is asked to monitor the progress of implementation. The Presidency is asked to report to the Council in December 2006 on the state of implementation.

10. The Council calls upon the Member States, the Europol Management Board and the Europol Director to start implementing the following measures. The Presidency is asked to report to the Council in December 2006 on the progress made in the implementation of these measures.

- a. the agreements between Europol and Eurojust on the one hand and Europol and SitCen on the other hand should be evaluated by the end of 2006
- b. Europol should conclude operational agreements with Frontex and the European Communities (with respect to OLAF) by the end of 2006
- c. Allowing the usage of Europol's secure ICT infrastructure for bilateral exchange of information between the Member States (Europol as service provider). Where possible, information exchanged bilaterally should be included in appropriate Europol databases.
- d. In order to widen the scope of Europol's knowledge management centre it should be possible for Europol to collate and maintain a list of specialist equipment held in one Member State which is available for loan or use in another Member State.
- e. Particularly when suggested by the OCTA, the Member States should grant Europol a stronger role in the fight against serious international crime originating from specific regions (e.g. the Western Balkans) that have been identified as a priority (e.g. through the OCTA) by allowing the secondment of Europol experts to coordinate the numerous EU and, with the approval of the MS concerned, MS law enforcement initiatives in the specific region. They should work in close cooperation with MS' LOs in the region to ensure coherence with Member State initiatives.
- f. An overall catalogue of the tasks of Europol and of other EU law enforcement and intelligence agencies needs to be drawn up, making clear divisions. In this respect, Europol deserves a central role because of its long experience and its unique legal framework and multi-disciplinary character, e.g. regarding information analysis and processing.
- g. To coordinate MS activities in this field and to avoid duplication of efforts Europol should play a stronger role in the fight against internet crime. Subject to an appropriate business case, Europol could monitor the internet for serious crime such as child pornography and, subject to ongoing discussions within the Council structure, terrorism related offences.

- h. In the area of information exchange it is necessary to work on faster and more accurate feedback from MS on their use of Europol analytical outputs. The Member States should also provide more relevant information or outputs regarding ongoing investigations.
- i. The mechanism to assess and report on the quantity and quality of the cooperation between MS and Europol should be further developed.
- j. The MS, Europol and other EU actors should take the requirement of interoperability into consideration when designing their ICT systems
- k. To make full use of Europol an automated cross-check mechanism should be put in place that automatically checks information in the different Europol systems (e.g. AWF, IS, InfoEx) for cross-references and wherever the handling codes applied allow for this, notify the owners of the information (Europol should be enabled to act as a black-box facilitator for all data exchanged via and processed at Europol).
- l. Increase analytical capacity through:
 - finalising OASIS as soon as possible,
 - employing more analytical assistants,
 - requiring Member States to adhere to the requirements for data to be submitted
- m. Europol and the HENUs should draw up an inventory of the methods, skills, knowledge and so on required for successfully implementing intelligence-led policing. This should result in recommendations on intelligence-led policing for Europol and the Member States. Europol and Cefpol should organise training on the subject.
- n. Member States should try to ensure that their ELOs have online access to national databases, but in any case they should be in a position to deliver replies within an appropriate timeframe.
- o. All competent authorities at national level should be determined as (part of the) Europol National Unit(s), subject to a decision by the MS with reference to the specific mandate of these authorities.

- p. A comprehensive concept for the relations between Europol and other relevant institutions in the EU and the Member States should be established. The action of all EU bodies and organs involved in the fight against serious international crime, including cooperation between Europol and EU police missions, should be coordinated.
- q. The procedure for concluding cooperation agreements between Europol and EU bodies and agencies should be simplified.
- r. The rules for cooperation with third partners should be reviewed in order to provide more clarity (within JHA decision making process) and eliminate lengthy procedures although the system of EU supervision shall be guaranteed. The rules should be simplified by replacing the four instruments with two (one MB decision and one Council decision).
- s. It is necessary to clarify the possibilities under the current provision on transmission of personal data to third parties that permit Europol to exchange information also with countries that do not have an adequate data protection standard as stipulated in article 18 of the Europol Convention.
- t. The tasks of the Management Board, the Director and other key organs in the governance arrangements of Europol should be clearly defined. The Management Board should be refocused on strategic oversight. The Director should manage the day-to-day affairs of the organisation.
- u. Resources could possibly be saved on both sides if a clear expectation would be expressed on the precise role of the MB in Europol's corporate governance. Making the bodies representing the Member States at Europol act in a more coherent way and have them express their views on Europol's direction with one voice should clearly increase the efficiency of Europol's corporate governance system.
- v. MB actions should be more strategy based. More often the work currently done by the MB should be prepared by sub-groups of the MB. For that to be possible clear instructions from the Management Board are needed as well as consistent representation of the Member States at the different levels of Europol's corporate governance.

- w. The supervision of Europol should be divided into two, administrative (functioning of the organisation) and professional.
- x. The relationship between Europol (MB and Director) and the PCTF should be defined. Formalising the cooperation between Europol and the PCTF could clarify this situation and make the activity of Europol more operational, but it should be ensured that the PCTF does not become a second body assigning tasks to Europol.
11. In order to prepare a more flexible legal basis for Europol, the Council concluded that the Europol Convention shall be transformed into a Council Decision by the end of June 2007.
12. With the Council Decision a solution shall be prepared for the transformation regime and for the transformation of the Protocol on privileges and immunities and the Protocol on the European Court of Justice.
13. The transitional arrangements must guarantee a smooth transition from the current situation to a Europol based on a Council Decision. Continuity and legal certainty for all parties involved have to be ensured.
14. [...²]
15. The new legal framework of Europol shall be based on the following principles:
- Maintaining the role of the Council in the setting up of the legal framework and the strategic priorities of Europol
 - Giving Member States an appropriate role in the supervision of the management of Europol.
 - Giving Member States an appropriate role in the operational planning of Europol.
 - Providing for the possibility of an appropriate control of Europol by the European Parliament, if it so decides.

² Procedure to abrogate the Europol Convention to be included following discussion at 16/17 May 2006 CATS meeting.

- Aligning the administrative rules (staff regulations, salaries and allowances, privileges and immunities, financial regulations including procurement procedures and financial oversight, rules on confidentiality) on the rules applying to existing EU agencies (Eurojust, Cepol).
- The Council encourage the European Parliament to set up a joint EP – national parliament mechanism to follow Europol’s activities
- A new mandate should distinguish clearly between objectives , competences and tasks following the example of Eurojust.

16. In addition, the Council calls upon the Member States, the Europol Management Board and the Europol Director to prepare the implementation of the following options within the time frame mentioned. The Presidency is asked to report to the Council in December 2006 on the progress made in the implementation of these options.

- a.** Where relevant for the fulfilment of its tasks, Europol should be given access to EU information systems (*e.g.* SIS, VIS, Eurodac, CIS).
- b.** A clause should be included in Europol’s legal framework enabling Europol to act as a service provider for EU information systems within the area of internal security but outside the current competence (*e.g.* a DNA database).
- c.** Without prejudice to Europol giving priority to its core business, in exceptional cases, Europol should not be prohibited from assisting a Member State upon its request in combating forms of serious crime which are only related to that one Member State. This should particularly be the case for crimes that due to their serious nature or dimension have the potential to affect other MS.
- d.** Europol should be allowed to cooperate with private entities such as universities or credit card companies in order to obtain information from them. An intelligence-led approach entails that information from multiple sources is combined to allow for the best possible assessment of a particular crime-related problem or situation. Arrangements for public-private partnership in this area must be explored and promoted.
- e.** The prohibition to connect Europol systems with other systems than the system of the Europol National Units should be removed, subject to maintaining the security of Europol’s own systems.

- f.** The limitation stemming from Art. 7 (1) of the Europol Convention (restricted access for ENUs to EIS information) should be removed.
- g.** Building on the 2003 protocol and with reference to the Europol National Unit, Europol's databases (with the exception of AWFs and the Index System) should be made directly accessible for MS law enforcement authorities and competent EU institutions and bodies.
- h.** A more efficient and flexible system for individuals' right of access to Europol data should be put in place, possibly following the example of the relevant provisions in the Eurojust Decision.
- i.** It should be legally ensured that the JSB is involved in the process of drafting secondary legislation dealing with information processing (e.g. analysis rules).
- j.** The function of a data protection officer should be established in Europol's main legal instrument following the example of the Eurojust decision.
- k.** A legal basis should be created to allow Europol to set up specialised databases, e.g. in the area of child pornography and terrorism
- l.** Liaison officers should be formally allowed to exchange all information (including non-mandate information) between themselves.
- m.** The standard quorum in the MB should be simple majority and where specifically mentioned in the Europol legal instrument, two thirds majority.
- n.** Democratic control of Europol should be developed in accordance with the extension of Europol's powers. In case Europol's operational powers would be increased, an increase in the exchange of intelligence takes place and a more flexible legal framework is put in place, there is a clear case to be made for more parliamentary oversight over Europol's functioning. At the same time it must be ensured that such oversight would not have any unintended negative effects on Europol's effectiveness.