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SELECT COMMITTEE ON  
THE EUROPEAN UNION

EUROPOL'S ROLE IN FIGHTING CRIME

WITH EVIDENCE

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- (p) refers to a page of written evidence.

# FIFTH REPORT

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28 JANUARY 2003

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By the Select Committee appointed to consider European Union documents and other matters relating to the European Union.

ORDERED TO REPORT

## EUROPOL'S ROLE IN FIGHTING CRIME

- 10307/02 Initiative of the Kingdom of Denmark with a view to adopting a Council Act drawing up, on the basis of article 43(1) of the Convention on the establishment of a European Police Office (Europol Convention), a protocol amending that Convention
- 11702/02 Proposal for a Council Decision on the financing of certain activities carried out by Europol in connection with co-operation in the fight against terrorism
- 13254/02 Initiative of the Kingdom of Denmark with a view to adopting a Council Act drawing up, on the basis of Article 43(1) of the Convention on the Establishment of a European Police Office (Europol Convention), of a Protocol amending that Convention
- 13688/02 Initiative of the Kingdom of Denmark with a view to adopting a Council Act drawing up, on the basis of Article 43 (1) of the Convention on the Establishment of a European Police Office (Europol Convention), of a Protocol amending that Convention

### Abstract

Europol (the European Police Office) has a crucial role to perform in supporting the Member States in combating serious organised crime.

It is important that it should have the tools to operate effectively but also that it should be properly accountable.

This report examines a number of proposed amendments to the Europol Convention, which would:

***Extend Europol's remit:*** the formulation now proposed does not represent a major change, but the proposal to allow access to Europol other than through the national units is likely to cause problems

***Increase the European Parliament's oversight of Europol:*** increasing parliamentary oversight is welcome but there is a need to involve national parliaments as well as the European Parliament

***Facilitate data transfer with third countries:*** it is essential that adequate data protection safeguards should be in place.

## PART 1: INTRODUCTION

1. Europol (the European Police Office) is the agency responsible for supporting the Member States of the European Union in combating serious organised crime by collating and analysing intelligence provided by national authorities. Its headquarters are in The Hague. The Europol Convention, which formally established Europol, came into force on 1 October 1998 following ratification by the Member States. Europol started its full activities on 1 July 1999, although it had been operating on a limited basis in the form of the Europol Drugs Unit since 1994.<sup>1</sup>

2. Article 2(1) of the Convention sets out Europol's objective as being:

“to improve...the effectiveness and co-operation 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 organised 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”.

3. Europol is funded by contributions from the Member States. Its budget for 2002 was €m 48.5, of which the United Kingdom's contribution was €m 7.8.<sup>2</sup> Europol has some 240 staff members from the Member States, of whom 32 are from the United Kingdom (more than from any other country apart from the Netherlands).

4. This report examines proposals for amending the Europol Convention initially published by the Danish Presidency in July 2002.<sup>3</sup> The Presidency subsequently issued revised proposals in October and November 2002.<sup>4</sup> In conducting our inquiry we also took account of a number of related documents, in particular the Opinions of the Joint Supervisory Body (JSB), which is responsible for advising on the data protection aspects of Europol's work, and of the Europol Management Board;<sup>5</sup> the Commission's Communication on Democratic Control over Europol, which the Committee had examined earlier in the year;<sup>6</sup> and a draft Council Decision on Community funding of certain activities of Europol relating to terrorism, which we decided to incorporate in our inquiry.

5. We have also examined in some depth a proposed Agreement between Europol and the United States of America on the transfer of personal data. The data protection issues raised by this Agreement are relevant to the proposed amendments to the Convention relating to transfer of data to third countries, which we consider in Part 4.

6. The inquiry was undertaken by Sub-Committee F of the Select Committee, whose membership is shown at Appendix 1. A copy of our call for evidence is at Appendix 2; and a list of the witnesses who gave evidence to the Committee, to all of whom we are most grateful, at Appendix 3.

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<sup>1</sup> Europol has been the subject of several previous inquiries by the Committee: *Europol* (1994-95 10th report, HL Paper 51); *Europol: Confidentiality Regulations* (1997-98 1st Report HL Paper 9); and *Europol: Joint Supervisory Body* (1997-98 13th Report, HL Paper 71). In addition, in 1999 the Committee inquired into computer systems in the Justice and Home Affairs area, including the proposed Europol Information System (*European Union Databases*, 1998-99, HL Paper 120).

<sup>2</sup> On a GDP “key” of 16.5 per cent. This will rise to 18 per cent in 2003, when the United Kingdom's contribution will be £6.2m (€m 10) (Q 71).

<sup>3</sup> Council document 10307/02, EUROPOL 46.

<sup>4</sup> Council documents 13254/02 EUROPOL 76; 13254/2/02, EUROPOL 76 REV 2.

<sup>5</sup> Council documents 13688/02, EUROPOL 81; 13685/02, EUROPOL 79.

<sup>6</sup> COM (2002) 95final, EUROPOL 167212/02.

<sup>7</sup> *Proposal for a Council Decision on the Financing of Certain Activities carried out by Europol in connection with co-operation in the fight against terrorism* (Council document 11702/02).

## PART 2: EXTENDING EUROPOL'S REMIT

7. The Danish Presidency's proposals fall into three main parts:

- extending Europol's remit and streamlining its method of operation;
- increasing parliamentary oversight of Europol's activities; and
- facilitating data transfer with third countries.

We consider each of these sets of issues in turn.

### The scope of Europol's remit

8. Since its inception Europol's remit has been progressively extended from its initial responsibility for combating drugs to its current responsibilities as set out in the box below:

#### What crimes does Europol cover?

##### Crimes specified in Article 2 of the Convention

Unlawful drug trafficking  
 Trafficking in nuclear and radioactive substances  
 Illegal immigrant smuggling  
 Trade in human beings  
 Motor vehicle crime

Crimes committed in the course of terrorist activities.

##### Other forms of crime listed in the Annex to the Convention<sup>8</sup>

Crimes against life, limb or personal freedom  
 Crimes against property or public goods including fraud  
 Illegal trading and harm to the environment

These offences fall within Europol's remit only if:

“there are factual indications that an organised 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”.<sup>9</sup>

Europol's remit currently focuses, therefore, on serious forms of transnational *organised* crime.<sup>10</sup>

<sup>8</sup> Europol's remit was extended to cover these offences by a Council Decision of 6 December 2001 (C 362, 18 December 2001, p 1). As Statewatch noted in their written evidence, “this was the fourth extension by the Council from the five original forms of crime in Europol's mandate under Article 2 to 25 specific offences” (p 1).

<sup>9</sup> Article 2 of the Convention.

<sup>10</sup> Europol is quite separate from Interpol (the International Criminal Police Organization) which has a much wider international coverage with 181 members. Interpol's mission is to facilitate international police co-operation. It does so primarily by providing a communication system between national police forces and an information exchange facility, including, for example, issuing wanted notices for fugitives. Although Interpol has an analytical capability and maintains intelligence databases to which its members have access, unlike Europol it would not normally undertake in-depth analyses in relation to particular serious crimes. Interpol's remit is not limited to organised crime.

9. The initial draft of the proposal to amend the Europol Convention would have replaced the existing provisions and defined Europol's remit simply by reference to the generic term "*serious international crime*". This would have removed not only the list of offences (including the specific reference to terrorism) but also the requirement for crime to be "organised" in order to fall within Europol's remit. In its evidence Europol justified broadening its mandate in this way on the grounds that:

- international criminals do not always operate within the boundaries of the offences specified;
- it is not always clear from the outset whether or not a particular instance of crime is part of the work of an organised structure;
- the extension would enable Europol to assist in cases of transnational crime which are not organised (such as serial killings in more than one Member State); and
- Europol's mandate would be brought in line with the mandate of Eurojust, the EU's judicial co-operation unit (p 49).

10. There was, however, very little support from the Member States, including the United Kingdom, for such an extension of Europol's remit. The Government said that they would prefer to see specific references to organised crime but would be willing to accede to the proposal if adequate arrangements for prioritising Europol's activities were put in place in the Convention itself (p 11, Q37). The Government also called for "a more objective definition": rather than it being left to the national authorities to define serious international crime, they recommended adoption of the definitions of "serious crime" and "transnational crime" in Articles 2 and 3 of the United Nations Convention against Transnational Organized Crime (p 11).<sup>11</sup> The lack of clarity of the term "serious international crime" was also criticised by other witnesses ranging from JUSTICE to the Director of the National Criminal Intelligence Service (NCIS). JUSTICE argued that the extension would effectively open up Europol's mandate to cover "any crimes with a cross-border element" (p 55). The Director General of NCIS also took exception to the use of serious crime as the criterion, observing that "a murder in a local community is a very serious crime, but it may well not be too relevant to the work of Europol" (Q79).

#### "SERIOUS INTERNATIONAL CRIME"

11. Defining Europol's remit solely by reference to "serious international crime" would in our view have been highly unsatisfactory. We accept that, as Europol itself argued, it would have had the advantage of flexibility in covering all forms of organised crime without the need for further Council Decisions or amendments to the Europol Convention. But, in the absence of fuller statutory definition, it would in effect have left interpretation of the term, and consequently of Europol's remit, to Europol itself and national law enforcement authorities.

12. A "catch-all" concept of serious international crime would also leave it unclear whether Europol's remit extended to offences which do not require a degree of organisation and which are not in their nature cross-border (even though the offender may commit offences in different Member States). This approach would be likely to lead to significant differences of interpretation in different Member States. It would also raise serious data protection issues. In its opinion on the Danish proposal, the Joint Supervisory Body (JSB) referred to Council of Europe Recommendation R(87)15, Principle 2.1 of which limits the collection of personal data for police purposes "to such as is necessary for the prevention of a real danger or the suppression of *a specific criminal offence*" (emphasis added). The JSB took the view that the extension to serious international crime would not contravene the Recommendation provided that a regulatory

<sup>11</sup> "Serious crime" is defined as "conduct constituting an offence punishable by a maximum deprivation of liberty of at least four years or a more serious penalty"; an offence is categorised as transnational if:

- (a) It is committed in more than one State;
- (b) It is committed in one State but a substantial part of its preparation, planning, direction or control takes place in another State;
- (c) It is committed in one State but involves an organized criminal group that engages in criminal activities in more than one State; or
- (d) It is committed in one State but has substantial effects in another State.

instrument was adopted to determine objective criteria by which to regard certain types of crime as serious international crime. The Information Commissioner took a similar view, stating that any move to extend Europol's remit in this manner *ought to define the crime* (Q 115, emphasis added).

“INTERNATIONAL ORGANISED CRIME”

13. An alternative approach to defining Europol's remit generically would have been to use the term “international organised crime”. But similar issues of legitimacy and clarity would arise, not least in view of the elusive nature of the concept of organised crime. Most of our witnesses, including the Government, NCIS, and Europol, considered that a reference to the definitions contained in the UN Convention on Transnational Organized Crime (see paragraph 10 above) would help to address the lack of clarity as to what constitutes organised crime, even though, as Europol noted, some of these criteria—such as the concept of an “organised criminal structure”—are difficult to substantiate. At the same time, in the absence of a list of offences, there would still be a danger of Member States having a different understanding of what constitutes organised crime.

REVISED PROPOSALS

14. In response to the concerns described above, the latest draft of the proposal limits Europol's remit to serious international crime where “there are factual indications or suspicions that an organised criminal structure is involved and two or more Member States are affected 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”.<sup>12</sup> The wording thus extends Europol's remit in covering crimes where there is a suspicion (and not only a factual indication) that organised crime occurs. But otherwise the proposal reproduces the existing wording of Article 2 of the Convention (see paragraph 8 above). Moreover, in the amended version the offences currently listed in the Convention and its Annex are specifically enumerated in new Article 2. Consequently the new version differs only marginally from the current wording of the Convention. The only other difference is the reference to “serious international crime”, which is, however, still subject to the requirement that it has to be organised.

CONCLUSION

15. We do not regard expansion of Europol's remit as a high priority. It is already extensive (covering some 25 offences) and the current arrangements have been in place only since the end of 2001. In our view the existing approach, which relies on reference to specific offences, is probably the best way to achieve clarity in relation to Europol's tasks. It also ensures that, if further offences need to be added to Europol's remit, it is a matter for the Member States. (Article 43 (3) of the Convention provides a procedure for adding new offences to the Annex without having to amend the Convention itself.) It must be for Governments and national parliaments, and not for Europol itself, to decide on its remit

**16. Consequently we welcome the abandonment of the proposal to define Europol's remit solely by reference to “serious international crime” and reversion to a definition close to that currently in the Convention. If further clarification is required, there would be advantage in including a reference to the UN Convention to help interpret “organised crime”; and it would be desirable to clarify the meaning of “suspicion” in the new text.**

**17. The definition of the remit is less important in its own right than as a means of ensuring that Europol's tasks are clearly defined so that:**

- **there is a shared understanding throughout law enforcement agencies across the Member States of what Europol is responsible for; and**
- **Europol does not engage in matters that do not require its involvement.**

**It is also essential, as the Minister acknowledged,<sup>13</sup> that there should be effective prioritisation of Europol's tasks to avoid it becoming over-burdened. The Europol**

<sup>12</sup> Council document 13254/2/02 REV 2, 21 November 2002.

<sup>13</sup> Mr Ainsworth described prioritisation as the “absolute top priority” (Q 43).

**Management Board has a key role in identifying Europol’s priorities and measuring performance against them. The draft Decision calls on the Council, on a proposal from the Europol Management Board, to prioritise action in relation to specific forms of crime (Article 2(1)). It will be important that good use is made of this provision**

### **The role of national units**

18. At present a central feature of Europol’s operation is that a national unit established in each Member State “shall be the only liaison body between Europol and the competent national authorities”.<sup>14</sup> In the United Kingdom the national authority is NCIS. The Danish Presidency’s proposals would allow Europol, subject to certain limitations, to liaise directly with law enforcement agencies in the Member States other than the national units.

19. The initial version of the proposals would have deleted the requirement for all communication with Europol to be via the national units. It would have enabled “competent authorities” to:

- supply Europol with information;
- respond to requests for information; and
- issue requests for advice, information, intelligence and analysis.

Evaluating information and intelligence and supplying Europol with information for storage in the computerised system would have remained reserved to the central units.

20. The only witness in favour of this change was Europol itself, which argued that it would increase the information available to Europol and, by bringing Europol into direct contact with operational law enforcement agencies, make them more familiar with its work and appreciate better the contribution it could make.

21. The Government were strongly opposed to this proposal—as we understand were other Member States—on the ground that bypassing the national units would complicate communication and be a recipe for confusion. We agree with the Government on this point. The concept of the national units was devised in order to ensure that there was a single authority in each Member State responsible for passing information to Europol and receiving analyses from them. If requests for information could bypass the national unit, not only would there be no way of keeping track of what had been provided to Europol, but the opportunity to issue requests for analyses etc would make it more difficult for Europol to prioritise its work in responding to requests, a difficult enough task already given the width of its remit. The National Crime Squad pointed out that the national units have important functions in analysing and grading intelligence before it is passed to Europol and in relation to data protection. They said: “abolition of national units would be at the expense of both the format and quality of intelligence therefore significantly increasing the risk to successful operations” (p 22). The Office of the Data Commissioner also drew attention to the risk that the proposal could have an adverse impact on data quality (p 32). Not surprisingly NCIS was opposed to a proposal that would undermine its role but its evidence was supported by the Director General of the National Crime Squad, whose Director General described the bypassing of national units as “a recipe for internal chaos”, particularly in the light of forthcoming enlargement (Q 73); and by the Associations of Chief Police Officers both in England and Wales and in Scotland.<sup>15</sup>

**22. We support the Government’s view that the Europol national units should remain the sole liaison bodies between Europol and national authorities and that provision should not be made, as the draft Decision proposes, for Europol to communicate directly with “other competent authorities”. We have received no evidence in support of this proposal except from the Commission and Europol itself, and in our view it would be likely to cause confusion about what information was passing to and from Europol with little apparent gain.**

23. The Presidency’s revised proposals contain a different solution, leaving it to Member States to decide whether competent authorities other than the national units

<sup>14</sup> Article 4 of the Convention.

<sup>15</sup> ACPO submitted a joint memorandum with NCIS (p 20); (ACPO(S) commented separately that the experience of national unit staff was beneficial when determining the appropriate avenue for any enquiry being made of Europol (p 44).

should be able to contact Europol directly. Direct contact would be with the prior involvement of the national unit and information exchanges would be copied to the national unit. In their explanatory memorandum the Government said that they would seek to add further safeguards:

- clarification that information communicated under Article 4 will be sent simultaneously to the national unit,
- assurance that the national unit will always be involved if the outcome of the query is positive, and
- a requirement that Member States should designate and declare who their competent authorities are.

**24. The safeguards sought by the Government would all be desirable, but in our view it would be preferable to retain the existing system of communication with Europol exclusively through the national units.**

### **Extension of the right to interrogate the Europol Information System**

25. Similar considerations apply to the proposed amendment of Article 9 of the Europol Convention, which would extend the right to interrogate the Europol Information System to “competent authorities” other than the Europol national units. “Competent authorities” are defined very widely as all public bodies responsible for preventing and combating criminal activities. This would cover not only individual police forces but even local authorities and—as the Office of the Information Commissioner pointed out—the Information Commissioner herself (p 33). While this extension of the right to interrogate the System might indeed—as the European Commission suggested (p 47)—make the system more flexible and help to increase the acceptance of Europol in the Member States, it would have the disadvantages of both undermining the central role of the Europol national units and increasing the risk of uncontrolled use of data.

26. Under the proposed amendment the result of the query submitted by other competent authorities would be limited to an indication of whether or not data was available in the system—whether, for instance, a file existed on a named individual—without any of the relevant details being passed directly to the requesting authority. These would still need to be requested via the national units. However, as the Deputy Information Commissioner pointed out (Q 123), simply finding out whether there is an entry on a person on the system is in itself a significant piece of information, which could lead to some action being taken against the person concerned. It should therefore be subject to the most effective control of data transmission and data protection rules. **We cannot support the case for extending access to the Europol Information System more widely. The current exclusive right of interrogation by central national units provides the best guarantee of effective data protection.**

### **Europol as the contact point for action against counterfeiting the euro**

27. The Danish Presidency’s proposals would add to Article 3 of the Convention a provision that Europol should act as the European contact point for the suppression of counterfeit euro currency. As the single currency of currently 12 of the EU Member States (and of a number of countries outside the EU), the euro is an attractive target for counterfeiting. A number of cases have already been reported (QQ 59-61).<sup>16</sup> The damage counterfeited euros can do to both companies and citizens is clearly a matter of common concern for the Member States, all of which also treat counterfeiting of currency as a serious crime under their national legislation. Because of the obvious cross-border dimension of the fight against counterfeiting the euro it requires the mobilisation of all available resources at both the national and the international level.

28. One of our witnesses, Professor Guild, saw this provision as consolidating Europol’s control over the euro at the expense of the claim of OLAF,<sup>17</sup> the EU’s anti-fraud office, and intensifying competition between the two institutions by creating

<sup>16</sup> According to its biannual press release on counterfeiting the euro issued in July 2002 over 400 counterfeiting cases were reported to Europol in the first six months of 2002, although this was “far less” than originally anticipated and the quality of the forgeries was generally low.

<sup>17</sup> *Office de Lutte AntiFraude*.

overlap between them (pp 52-53). In her view it was an example of a wider tension between the First and Third Pillars of the EU, the former relying on harmonisation of national provisions and the latter on the looser concept of mutual recognition.

29. We cannot in this report do justice to Professor Guild's thesis, which goes much wider than amendments to the Europol Convention, but we have not identified the division of responsibility between Europol and OLAF in this area as particularly problematic. It is clearly right that Europol—as the EU's central police co-operation agency—should play a substantial role in countering counterfeiting of the euro. No objection to the proposed amendment was expressed in the evidence we received from other witnesses (including from the Commission). On the basis of new paragraph 3(4) of the Convention Europol should be in a position to continue and enhance its co-operation with national units by sharing relevant information and helping with training and advice. This was already done to some extent in the months prior to the introduction of the euro and, according to the Association of Chief Police Officers in Scotland, liaison through Europol in this respect is a positive step (p 44).

30. It is important, however, that the proposed codification of Europol's role as the European contact point in the fight against counterfeiting the euro should not lead to marginalisation of OLAF in this field. As the EU's central organisation for combating fraud against the financial interests of the Union, OLAF could clearly contribute to more effective common action in a field in which some Member States have failed to take required action to protect the euro. Defining the respective tasks of Europol and OLAF does not fall within the remit of this inquiry but **the Committee urges all the parties concerned to ensure that Europol and OLAF co-operate in protecting the EU from the effects of counterfeiting the euro and that the best possible use is made of the resources of both organisations.**

### **Europol's overall role**

31. Some of our witnesses saw the Danish Presidency's proposals, taken with other measures such as a proposal (currently in abeyance) to allow the Europol Convention to be amended by a Decision of the Council and the recent decision to allow Europol to participate in joint investigation teams with the Member States, as marking a decisive shift in Europol's role. Statewatch argued that they “fundamentally alter the original constitution of Europol from a ‘reactive’ analytical agency to a ‘proactive’ operational unit.” In the event the change in Europol's remit now proposed is not very significant. But even if it had remained as originally proposed, in our view it would not have represented such a profound change as Statewatch suggested. All our official witnesses, including the Minister, the Director of Europol himself, and the Directors General of the National Crime Squad and NCIS were quite clear that the role of Europol was to act in support of the law enforcement authorities of the Member States, and that this would not be affected by the changes proposed. We agree with that assessment. **Europol has a crucial role to perform in combating serious organised crime, but it is at present essentially a role supporting national law enforcement authorities. If, as some have advocated, a fully operational role were proposed for Europol, this would be a very significant change, for which there should be a different legal basis, which could then be the subject of a major debate across the EU. It is important that Europol should not develop a major operational role simply as a result of a succession of relatively small changes to its remit.**

## PART 3: PARLIAMENTARY SCRUTINY OF EUROPOL'S WORK

### Danish Presidency proposals

32. The Protocol originally tabled by the Danish Presidency contained a number of proposals designed to strengthen the role of the European Parliament in scrutinising Europol's work. These included:

- provision for the annual (non-confidential) reports of both Europol and the Europol Management Board<sup>18</sup> (which produces one general report on Europol's activities during the previous year and another on Europol's future activities) to be sent to the European Parliament for information after they have been approved by the Council,
- similar provision for the analytical reports of the Joint Supervisory Body to be sent to the European Parliament,
- a provision that the "Presidency of the Council or its representative and the Director of Europol may appear before the European Parliament (EP) and before any joint committee that may be set up by the European Parliament in co-operation with national parliaments with a view to discussing questions relating to Europol", and
- an obligation on the Council to consult the European Parliament before measures are adopted on certain specified matters, in accordance with the consultation procedures laid down in the Maastricht Treaty. This applies to measures concerning the processing of personal data, communication of data to third States and other bodies, relations with third bodies and Europol organisational matters.<sup>19</sup>

33. In the amended draft the third of these proposals has been weakened in so far as it now provides only that the Presidency may be *assisted* by the Director of Europol; and the reference to a possible joint committee has been removed. We regret these changes: if the European Parliament is to have a role in scrutinising the work of Europol, it should be able to question the Director in his own right rather than only in support of the Presidency.<sup>20</sup> It also needs to be clarified what is meant by "may" in this context. It would be undesirable for the Presidency to be able to refuse a reasonable request from the Parliament to appear before it. We discuss in more detail below the idea of a joint committee.

34. In general, however, these proposals, particularly the last, would strengthen the role of the European Parliament quite substantially: an amendment by the European Parliament of an initiative in these areas of competence could be rejected only by unanimous decision in the Council. We do not regard the proposals as objectionable in themselves—they represent a significant increase in parliamentary and democratic involvement in Europol's important work—but they raise important issues about the nature of Europol's accountability and the respective roles of the European Parliament and national parliaments.

### The role of parliaments

35. In his evidence to us the Minister said that, while the Government could agree to proposals for informing, and in some areas consulting, the European Parliament about Europol's activities, they could not accept that Europol should be *accountable* to the European Parliament. In their view Europol's accountability is to the Member States through the Europol Management Board (p 12, Q 54).

36. We accept that Europol's primary accountability must be to the Member States. They provide its funding, appoint its senior staff, and, through the Management Board, set its priorities. At the same time it is clearly right that an organisation of such importance in the law enforcement field should not be immune from parliamentary scrutiny.

<sup>18</sup> The Board, which consists of representatives of each Member State, is responsible for supervising Europol's activities.

<sup>19</sup> Articles 10,18,24,26,28,29,30,31,40,41 and 42 of the Europol Convention.

<sup>20</sup> The European Commission also criticised this proposal on the ground that it did not give the European Parliament a formal right to request the Director's appearance (p 48).

37. In the United Kingdom the closest parallels to Europol are national policing organisations like NCIS and the National Crime Squad, particularly the former. They are funded by the Government and accountable to them, albeit at arm's length through the Service Authorities. But they may also be called to account by Parliament, usually through the Select Committee system, whether the Commons Home Affairs Committee or the European Scrutiny Committees in both Houses. (We ourselves have taken oral evidence from both organisations not only in this inquiry but also in our previous inquiry on illegal immigration.) Whether this amounts to "accountability" is to some extent a question of semantics, but it certainly represents an ability on the part of Parliament to call on these bodies to provide information and to explain and, where necessary, justify their actions.

38. We see no objection to an extension of scrutiny of Europol by the European Parliament (provided that the confidentiality of information held by Europol is not thereby compromised) but we are disappointed that similar consideration has not been given to the role of national parliaments. It is anomalous that formal parliamentary oversight of an essentially inter-governmental institution should be confined to the European Parliament.

39. In February 2002 the European Commission published a Communication to the European Parliament and the Council on *Democratic Control over Europol*.<sup>21</sup> It made a number of proposals for increased oversight of Europol by the European Parliament, which, with some modifications, have been largely picked up in the draft Protocol.

40. The Communication also proposed a joint committee of national parliaments and the European Parliament meeting twice a year to scrutinise the work of Europol. Closer contact with Europol would be maintained through a smaller group of members nominated by the joint committee. We are not aware of any precedent for such an arrangement, but, while there was some concern whether it might be an unduly heavy mechanism for oversight of an organisation for which it did not have direct operational responsibility, it would have met the need for the involvement of national parliaments in the work of Europol. The first draft of the Presidency's proposals included a reference to such a committee but it has been withdrawn from the latest proposals. We regret that change. It is particularly disappointing in view of the emphasis that has been placed in the Convention on the Future of Europe on the role of national parliaments in European policy-making. As the Convention Working Group on National Parliaments states in its final report: "an enhanced role for national parliaments would help to strengthen the democratic legitimacy of the Union and bring it closer to the citizens".<sup>22</sup> A joint parliamentary committee would provide a good practicable example of how national parliaments can have a positive input into European decision-making and increase democratic legitimacy. A possible alternative would be for there to be separate arrangements for scrutiny of Europol by national parliaments, but that would be likely to duplicate the work of the European Parliament. **We recommend that the Government press for the idea of a joint committee of Members of national parliaments and the European Parliament to be re-instated.**

### Community funding of Europol

41. As an inter-governmental institution Europol is, as explained above (paragraph 3), funded by contributions from the Member States according to a "key" determined by their respective GDPs. During our inquiry we received for scrutiny a separate draft Council Decision to establish a legal base for Community funding of Europol, to provide it with additional resources of €5 million in 2002 for certain activities in connection with the fight against terrorism.<sup>23</sup> Because of the important point of principle involved we decided to incorporate it in our inquiry.

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<sup>21</sup> COM(2002) 95 final.

<sup>22</sup> Brussels, 22 October 2002, point II.4, p.2. On the other hand in its final report Working Group X ("Freedom, Security and Justice") envisaged involving national parliaments only in the consideration of annual reports on the activities of Europol (see paragraph 46 below).

<sup>23</sup> Council document 11702/02. The activities to be funded in this way were: establishment of an information network of explosive devices; creation of a communications system for special police operations; creation of an operations centre to support anti-terrorist operations; and development of a European method for analysing terrorist threats.

42. Community funding would be a major step towards transforming Europol from an essentially inter-governmental institution into a Community institution, responsible to the Commission and the European Parliament for its funding and in consequence—at least to some extent—for its operations. This particular proposal was presented as an exceptional measure to meet a perceived need by the European Parliament for supplementary funding for Europol. However, it would almost certainly set a precedent for a more general move to Community funding, which in our view would be inconsistent with Europol’s inter-governmental status as a Third Pillar body.

43. We were surprised to learn from the Government’s Explanatory Memorandum that their objections to the proposal were mainly on grounds of practicality rather than principle. They were not opposed to Community funding as such but to separate sources of funding, which they believed would be likely to complicate the priority setting process by the Europol Management Board (as did Europol itself (p 52)). This concern was well illustrated by the handling of this proposal itself. According to the Explanatory Memorandum the proposed activities were never discussed by the Europol Management Board, which would not have necessarily regarded them as priorities. The Minister also told us that under the current arrangements additional money could be voted in if a new priority was identified (Q 68).

**44. There are telling practical reasons for resisting the proposal for Community funding of some of Europol’s activities, which would also be inconsistent with its status as a Third Pillar body. The Government should resist future attempts to change the basis of Europol’s funding.**

### **Europol’s future status**

45. We understand that that this funding proposal fell at the end of 2002, but the issues raised by it are still important not least in the context of the Convention on the Future of Europe. In its final report Working Group X “Freedom Security and Justice” recommended replacing existing Third Pillar instruments with First Pillar instruments: under this scheme Conventions would be converted into regulations or directives. The Working Group specifically envisaged that the Europol Convention would be replaced by a regulation, which it saw as solving “the pressing legal problems, which presently make any future development of the Europol legal framework so cumbersome”.<sup>24</sup>

46. The Working Group also recommended the incorporation in the Treaty of a general provision on Europol “which would give the legislator a greater margin to develop Europol’s tasks and powers”; and it envisaged the possibility of Europol carrying out investigations.<sup>25</sup> The combination of these recommendations would radically change both the legal basis of Europol’s activities and its remit. It remains to be seen what the Convention itself recommends, but to give Europol a broad general base in the Treaty would run counter to our view, explained in Part 2, of the need for a clear and detailed definition of Europol’s remit. And, as we recommended above (paragraph 31), any major change in Europol’s role in the direction of a major operational role would need to be debated widely. Finally, the Working Group recommended that Europol should be subject to “democratic accountability to the European Parliament and to the Council”.<sup>26</sup> While this is unexceptionable in itself, the Working Group seems to see the role of national parliaments as being limited to involvement in the consideration of annual reports, which in our view would not be adequate, nor consistent with the view of the Working Group on National Parliaments quoted in paragraph 40.

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<sup>24</sup> *Op cit*, p 8.

<sup>25</sup> *Op cit*, p 18.

<sup>26</sup> *Op cit*, p 23.

## PART 4: DATA PROTECTION ISSUES

**Transmission of data to third countries**

47. Co-operation with third countries is of crucial importance for the fight against international crime: criminals constantly operate across the EU's borders with third countries. The Committee accepts that, subject to satisfactory safeguards, Europol should be enabled to exchange data, including personal data, with competent authorities in third countries. The proposed amendments to Article 18 of the Europol Convention are aimed at facilitating co-operation between Europol and third country authorities through changes to the conditions under which personal data can be transmitted. However, the facilitation of international police co-operation must not come at the expense of adequate protection of personal data, which is one of the fundamental common values of the EU Member States.

48. The transmission of data to third countries and other bodies raises some difficult issues. These were graphically illustrated, in the course of our inquiry, by a separate document that we considered as part of the normal scrutiny process—an Agreement between Europol and the United States of America on the transmission of personal data and related information.<sup>27</sup>

## EUROPOL/USA AGREEMENT

49. This Agreement was negotiated to enable Europol to exchange personal data with the United States of America. While the Committee had no objection of principle to the Agreement, we were concerned both about the handling of the scrutiny process on this occasion and about a number of important issues of substance. The draft Agreement was deposited very late, when it appeared that the text had already been agreed with the United States. As there had been no consultation on the draft outside Government we sought the views of several non-governmental organisations and received helpful comments from JUSTICE and Statewatch. We have included their submissions in the published evidence.<sup>28</sup>

50. Our main concerns, expressed in a lengthy correspondence with the Government, were:

- the fact that the Agreement provided for the exchange of data for purposes much wider than Europol's remit. JUSTICE argued that information exchange under the Agreement should be explicitly restricted to criminal proceedings within the remit of the Europol Convention (p 61), and we saw attraction in this suggestion.
- the wide range of US authorities entitled to receive data from Europol under the Agreement, which included local as well as State and Federal law enforcement authorities. We recommended restricting those authorities to Federal and State authorities, but the Government did not accept this suggestion.
- a provision in the Agreement for data to be passed under certain conditions to Third States. As the JSB had recommended that Europol data should never be passed on by the United States and this had been accepted by the parties concerned, we believed that this should be reflected in the Agreement itself, but again the Government did not accept this suggestion.
- the lack of information about the bodies in the United States which the United States Government had identified as available to protect the data transmitted. We accepted that it would not be reasonable to expect the precise application in another country of EU data protection rules, but were concerned that data transmitted to the United States should be subject to broadly equivalent data protection standards.<sup>29</sup>

<sup>27</sup> Council document 13689/02, EUROPOL 82. The Agreement was supported by an exchange of letters (13996/02, EUROPOL 95) and both documents were the subject of opinions of the JSB ((13689/02, EUROPOL 82 ADD 1 and JSB doc 02-73 respectively).

<sup>28</sup> pp 60-65.

<sup>29</sup> Some of the correspondence is available on the Select Committee's website at [www.parliament.uk](http://www.parliament.uk).

51. In the event none of the Committee's main concerns were satisfactorily met by the Government, and the Agreement was finally approved by the Council in December, when the Government overrode scrutiny reserves from both Houses of Parliament. The difficulties that arose appeared to be due in part to the fact that the details of the Agreement had in effect been settled with the United States authorities before it was deposited for scrutiny and the Government therefore had very little room for manoeuvre. There are general lessons to be learnt here for the scrutiny process about the need for Parliament to have an opportunity to scrutinise texts while there is still some chance of influencing the outcome. But the episode also highlights two more specific issues relating to the protection of Europol data transmitted to third countries.

52. First, the authority to negotiate agreements with third countries has been delegated to the Director of Europol. With hindsight it might have been preferable for this responsibility to have been retained within the Council in such a sensitive area. But the current arrangements mean that it is essential that the Director's negotiating mandate is very carefully prepared.

53. Secondly, we were concerned about the role played by the Joint Supervisory Body (JSB). Unusually the JSB was closely involved in the negotiations with the United States and we welcome that as potentially being the best way to ensure satisfactory data protection provisions in such agreements. But we were disappointed that on this occasion the JSB does not appear to have taken a sufficiently independent approach on the serious points of concern that we identified. Our concern was not allayed when we took evidence from the Deputy Information Commissioner, who represents the United Kingdom on the JSB. We were left with the impression that on some issues it had let its acknowledgment of the political imperative to secure an agreement override its responsibility for ensuring essential data protection safeguards. **The Committee hopes that the Joint Supervisory Body will continue to be closely involved with the preparation of agreements between Europol and third countries involving the transmission of personal data and urges it to adopt a robust approach to the protection of personal data in them.**

#### TRANSMISSION OF DATA IN EXCEPTIONAL CASES

54. This experience has served to increase the Committee's concerns regarding the proposed amendments to Article 18(1) of the Europol Convention. These would allow the Council when adopting rules for exceptional cases in which the transmission of data seems absolutely necessary to deviate from Article 18(1) point 2 of the Convention, which provides for an adequate level of data protection. The Committee's concerns are largely in line with criticisms voiced in the opinion of the Joint Supervisory Body.<sup>30</sup> The Committee considers that, however exceptional a particular case may be, adequate data protection should always be maintained as a criterion for deciding whether or not a requested transmission of personal data will be allowed. **The Committee urges the Government to ensure that any amendment to Article 18 of the Convention provides sufficient guarantees that any agreement on the transmission of personal data from Europol to a third country will be preceded by an individual assessment of data protection law and practice in the country concerned.**

#### AUTHORISATION BY MEMBER STATES

55. The Committee notes with satisfaction that the proposed amendment to Article 18(4) of the Europol Convention provides that personal data communicated to Europol by a Member State may be communicated by Europol to third States and third bodies only with the Member State's consent. **The Committee urges the Government to ensure that any agreements with third countries fully reflect the final authorisation power of the Member State concerned, which should also extend to the choice of the authorities in the countries to which personal data is transmitted.**

#### "HANDLING CODES"

56. The Committee was informed by Europol that electronic "handling codes" are attached to Europol data files. These codes play a crucial technical role in the context of effective authorisation and control procedures as they can determine to whom personal data contained in the files may and may not be transmitted. The Committee regrets that

<sup>30</sup> Council document 13688/02.

the British representatives on the Europol Supervisory Body, when giving evidence to the Committee, were not in a position to explain the system of handling codes for information files and its implications for data protection (QQ 145-146).

### **Enabling Europol to process data as background information**

57. The Danish Presidency's proposals include an amendment of Article 6 of the Europol Convention to enable Europol to process and use data as background information in its information system and not only in connection with a specific work file (i.e. in relation to a specific inquiry). The Committee fully accepts that collating and analysing background information on international crime developments can be an important part of the analysis and information function of Europol and that there could be circumstances in which it was justifiable to use personal data for this purpose. It could—as suggested by HM Customs and Excise (p 45)—be of benefit, *inter alia*, to the further progress of research into EU-wide organised crime.

58. However, in the Committee's view the current phrasing of the proposed amendment to Article 6 of the Europol Convention does not sufficiently define what sort of other data could be used for this process and fails to explain its nature and possible use. The Committee shares the concern expressed in some of the evidence, for example from Statewatch (p 2) that this absence of clear definitions could lead to an indiscriminate use of personal data. The Committee notes in this context that the Joint Supervisory Body itself requested that the amendment should specify what categories of data would be considered as background information. **The Committee recommends that there should be a much clearer specification of what other data it is intended to process and for what type of background information, and more explicit assurance that the processing of any personal data would be subject to adequate data protection safeguards.**

### **Time-limit on the storage of personal data**

59. At present under Article 21 (3) of the Convention the time-limit on the storage of data by Europol is three years. The draft protocol would amend Article 21 of the Convention to increase this to five years. We have seen no justification for this change. As the time limit begins to run afresh from the date on which an event leading to the storage of data occurs, there seems little risk that destruction of the data after three years would hamper an ongoing investigation. **Unless compelling evidence is produced that the current time-limit on the storage of personal data gives rise to real practical difficulties, we recommend that it should not be increased.**

### **Right of access to Europol documents**

60. The proposed new Article 32a of the Europol Convention would give right of access to Europol documents to any citizen of the EU and those residing within the EU in accordance with the principles and conditions determined by the European Parliament and the Council in accordance with Article 255 of the Treaty establishing the European Community. The Committee welcomes this proposed amendment. It would put an end to the anomaly of Europol currently being exempted from the legally binding transparency rules to which other EU institutions are—and should be—subject. The Committee notes with satisfaction the statement by Europol in its written evidence (p 51) that Europol is already by analogy applying the rules applicable to public access to EU Council documents.

61. The Committee is also fully aware, however, that as a police organisation Europol has to be very selective in the documents made available for public access. The balance between desirable public access and the need to protect sensitive intelligence is clearly a difficult and delicate one, and the JSB has an important role in considering appeals against a refusal of disclosure. **The Committee regards it as important that a careful case-by-case assessment should be made of any requests for access to documents and that citizens should be clearly informed about the outcome of their requests.**

## PART 5: SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS

62. We welcome the abandonment of the proposal to define Europol's remit solely by reference to "serious international crime" and reversion to a definition close to that currently in the Convention. If further clarification is required, there would be advantage in including a reference to the UN Convention to help interpret "organised crime"; and it would be desirable to clarify the meaning of "suspicion" in the new text (*paragraph 16*).

63. The definition of the remit is less important in its own right than as a means of ensuring that Europol's tasks are clearly defined so that:

- there is a shared understanding throughout law enforcement agencies across the Member States of what Europol is responsible for; and
- Europol does not engage in matters that do not require its involvement.

It is also essential, as the Minister acknowledged, that there should be effective prioritisation of Europol's tasks to avoid it becoming over-burdened. The Europol Management Board has a key role in identifying Europol's priorities and measuring performance against them. The draft Decision calls on the Council, on a proposal from the Management Board, to prioritise action in relation to specific forms of crime (Article 2(1)). It will be important that good use is made of this provision. (*paragraph 17*).

64. We support the Government's view that the Europol national units should remain the sole liaison bodies between Europol and national authorities and that provision should not be made, as the draft Decision proposes, for Europol to communicate directly with "other competent authorities" (*paragraph 22*).

65. The safeguards sought by the Government would all be desirable, but in our view it would be preferable to retain the existing system of communication with Europol exclusively through the national units (*paragraph 24*).

66. We cannot support the case for extending access to the Europol Information System more widely. The current exclusive right of interrogation by central national units provides the best guarantee of effective data protection (*paragraph 26*).

67. The Committee urges all the parties concerned to ensure that Europol and OLAF co-operate in protecting the EU from the effects of counterfeiting the euro and that the best possible use is made of the resources of both organisations (*paragraph 30*).

68. Europol has a crucial role to perform in combating serious organised crime, but it is at present essentially a role supporting national law enforcement authorities. If, as some have advocated, a fully operational role were proposed for Europol, this would be a very significant change, for which there should be a different legal basis, which could then be the subject of a major debate across the EU. It is important that Europol should not develop a major operational role simply as a result of a succession of relatively small changes to its remit (*paragraph 31*).

69. We recommend that the Government press for the idea of a joint committee of Members of national parliaments and the European Parliament to be re-instated (*paragraph 40*).

70. There are telling practical reasons for resisting the proposal for Community funding of some of Europol's activities, which would also be inconsistent with its status as a Third Pillar body. The Government should resist future attempts to change the basis of Europol's funding (*paragraph 44*).

71. The Committee hopes that the Joint Supervisory Body will continue to be closely involved with the preparation of agreements between Europol and third countries involving the transmission of personal data and urges it to adopt a robust approach to the protection of personal data in them (*paragraph 53*).

72. The Committee urges the Government to ensure that any amendment to Article 18 of the Convention provides sufficient guarantees that any agreement on the transmission of personal data from Europol to a third country will be preceded by an individual assessment of data protection law and practice in the country concerned (*paragraph 54*).

73. The Committee urges the Government to ensure that any agreements with third countries fully reflect the final authorisation power of the Member State concerned,

which should also extend to the choice of the authorities in the countries to which personal data is transmitted (*paragraph 55*).

74. The Committee recommends that there should be a much clearer specification of what other data it is intended to process and for what type of background information, and more explicit assurance that the processing of any personal data would be subject to adequate data protection safeguards (*paragraph 58*).

75. Unless compelling evidence is produced that the current time-limit on the storage of personal data gives rise to real practical difficulties, we recommend that it should not be increased (*paragraph 59*).

76. The Committee regards it as important that a careful case-by-case assessment should be made of any requests for access to documents and that citizens should be clearly informed about the outcome of their requests (*paragraph 61*).

#### *Recommendation*

77. The proposal by the Danish Presidency to amend the Europol Convention raises important questions of policy and principle, to which the attention of the House should be drawn, and the Committee therefore recommends this report **for debate**.

## APPENDIX 1

**Sub-Committee F (Social Affairs, Education and Home Affairs)**

The members of the Sub-Committee which conducted this inquiry were:

- \* L. Corbett of Castle Vale
- \* L. Dubs
- B. Gibson of Market Rasen
- L. Greaves
- B. Greengross
- L. Griffiths of Fforestfach
- B. Harris of Richmond (Chairman)
- L. King of West Bromwich
- B. Knight of Collingtree
- B. Stern
- † B. Whitaker
- L. Wright of Richmond

\* From 26 November 2002

† Until 26 November 2002

Professor Jörg Monar, Co-Director of the Sussex European Institute, University of Sussex, was appointed as Specialist Adviser for the inquiry

**Interests declared by Members in connection with the Inquiry:*****Baroness Greengross***

Consultant/Adviser, European Movement  
Vice-Chair, Britain in Europe

***Baroness Harris of Richmond***

Former Member, NCS Service Authority  
Former Member, Police Negotiating Board

***Lord King of West Bromwich***

Member, Committee of the Regions and its external relations commission  
Member, Sandwell Metropolitan Borough Council

***Baroness Knight of Collingtree***

Vice-President, Local Government Association

***Baroness Stern***

Secretary-General, Prison Reform International

***Lord Wright of Richmond***

Consultant and former Director, De La Rue

## APPENDIX 2

**Call for evidence**

Sub-Committee F (Social Affairs, Education and Home Affairs) of the House of Lords Select Committee on the European Union is conducting an inquiry into proposals to amend the Europol Convention. On 2 July the Danish Presidency tabled a draft protocol to the Convention designed to strengthen support for Europol and for the operational support it provides to national police authorities; and to provide a greater role for the European Parliament in the management of Europol.

This initiative follows on from previous proposals to amend the Convention, most recently a Communication from the European Commission on the question of democratic control of Europol (COM(2002) 95 final).

The main proposals in the draft Protocol are:

- revision of Europol's remit to focus on serious international crime rather than as at present specified crimes, such as terrorism and unlawful drug trafficking
- confirmation of Europol's role as the European contact point for action against counterfeiting the Euro
- removal of the reference to the Europol National Units as the sole liaison bodies between Europol and national authorities
- enabling competent authorities (in addition to the national units) to query the Europol Information System
- enabling Europol to process data as background information and not just in connection with a specific work file
- provision for Joint Supervisory Board and Europol annual reports to be sent to the European Parliament as well as to the Council
- arrangements for the appearance of the Director of Europol before the European Parliament
- reference to the possibility of a joint committee being set up by the European Parliament in co-operation with national parliaments
- an obligation to consult the European Parliament on certain specified matters
- provisions on right of access to Europol documents

The Sub-Committee would welcome evidence on any of these aspects of the proposals and related issues, including the extent of Europol's current role and its future development. It will look particularly carefully at those aspects of the proposals that:

- are designed to increase Europol's effectiveness
- raise data protection issues
- increase oversight by the European Parliament and national parliaments

The Sub-Committee plans to hold oral evidence sessions in the autumn with a view to completing its report by the end of the year.

## APPENDIX 3

**List of witnesses**

The following witnesses gave evidence. Those marked \* gave oral evidence.

- Association of Chief Police Officers in Scotland
- Her Majesty's Customs and Excise (HMCE)
- European Commission
- Europol
- Professor Elspeth Guild
- \* Home Office
- JUSTICE
- \* National Crime Squad
- \* National Criminal Intelligence Service
- \* Office of the Information Commissioner
- Scottish Executive, Justice Department
- Scottish Parliament, European Committee
- \* Statewatch

## APPENDIX 4

**Extract from the Annex to the *Europol Convention***

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 objective 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:*

- organised 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

*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.