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European Union Committee

29th Report of Session 2007–08

**EUROPOL:
coordinating the
fight against serious
and organised crime**

Report with Evidence

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- (Q) refers to a question in oral evidence
- (p) refers to a page of written evidence

FOREWORD—What this report is about

Europol, the European Police Office responsible for coordinating the fight against serious and organised crime, began operations from its headquarters in The Hague in 1999. In January 2010 it will become an agency of the EU. The Council Decision bringing about this change in its constitution has made some amendments to its objects, powers, working methods and governance. Many of these changes are beneficial, so far as they go; but they do not go very far, and we believe this represents a missed opportunity.

The *raison d'être* of Europol is the exchange of information for law enforcement purposes. It is a matter of particular concern that four fifths of the information exchanged by national liaison officers stationed at Europol is exchanged without actually going through Europol, and hence without being placed on Europol's database and without being accessible to Member States other than those directly involved. The reason is a lack of trust: a reluctance on the part of Member States, especially at the early stages of an investigation, to share sensitive information with all Member States through the Europol channels. One way of improving this would be for Member States to station at Europol only officers and officials with the highest necessary security clearance.

In addition to simply facilitating the exchange of factual information, Europol analyses information to help the investigation of particular categories of crime. This is one of Europol's success stories. Undertaking analysis of information is one of the differences between Europol and Interpol, a difference we explain more fully in Chapter 2.

The United Kingdom has been influential in persuading Europol to base its work on Organised Crime Threat Assessments: planning for future threats rather than reacting to past events. Much however remains to be done to persuade other Member States of the value of this, and of other modern policing methods.

The existing structure for the governance and management of Europol is complex and cumbersome. The new Decision might have improved this, basing itself on the structure of other EU agencies; but it does not. We are making a number of recommendations which, if implemented, would clarify the respective duties of the Director and Management Board, and would make it easier for them to work together. A particular aspect of this which we consider is the responsibility for security in the organisation.

In the United Kingdom the Serious Organised Crime Agency—SOCA—is the body responsible for liaison with Europol. This works well, but the same cannot at present be said for liaison between SOCA and the United Kingdom police forces which provide it with much of its information. We make recommendations for improvement.

Accountability of Europol to the European Parliament and national parliaments would improve if the Treaty of Lisbon came into force; but even without that Treaty, there is scope for improvement.

EUROPOL: coordinating the fight against serious and organised crime

CHAPTER 1: INTRODUCTION

The subject of our inquiry

1. Major criminals are no respecters of frontiers. They treat national borders as at worst an inconvenience, at best an opportunity to commit ever more sophisticated offences and to help in escaping detection, prosecution and conviction. For law enforcers matters are otherwise. Borders represent the operational limits of national units, and differences in operational methods. They throw up language barriers, and problems are caused by different legal systems, different laws and different prosecution processes. It is the task of Europol, the European Police Office, to ensure that, for law enforcers, the national borders of the Member States cause as little hindrance as possible to the fight against serious crime.
2. Contrary to popular misconception, Europol is not a European Police Force; the European Union does not have a police force, and is unlikely to have one in the foreseeable future. Law enforcement remains the responsibility of the Member States. What the EU does have in Europol is an organisation whose task is to help the police forces of the Member States to help each other. Here is one example from December 2007:

BOX 1

Operation Dana

An armed and violent Eastern European gang committed around twenty armed robberies against high quality jewellers in the United Kingdom; there were over 200 similar incidents across the EU. Europol and Eurojust coordinated an operation involving law enforcement authorities in Estonia, Finland and the United Kingdom. Officers from three United Kingdom police forces visited Estonia at the end of 2007. Eight addresses were searched, seven suspects were arrested, and many mobile phones and SIM cards were seized. As a result United Kingdom forces have identified offenders in 16 cases and have brought prosecutions in 11 of them.¹

3. This is our seventh inquiry into aspects of Europol, but our first for six years. In the years leading up to 1 July 1999, when Europol began operations, we conducted four inquiries. The first was a major inquiry into the draft of the Convention between the Member States on the establishing of a European Police Office.² This was followed by brief reports drawing attention to the proposed Confidentiality Regulations,³ to the draft rules of procedure of the Joint Supervisory Body⁴ and to the rules governing cooperation between

¹ Evidence of William Hughes, Director General of the Serious Organised Crime Agency (SOCA), Q 91, and Europol Annual Report for 2007, page 22.

² *Europol* (10th Report, Session 1994–95, HL Paper 51).

³ *Europol: Confidentiality Regulations* (1st Report, Session 1997–98, HL Paper 9).

⁴ *Europol: Joint Supervisory Body* (13th Report, Session 1997–98, HL Paper 71).

Europol and third countries.⁵ Additionally, our 1999 inquiry into computer systems in the field of Justice and Home Affairs considered, among other databases, the Europol Information System.⁶ In 2002, when Europol had been operational for three years, we conducted an inquiry into proposals by the Danish Presidency to extend its remit.⁷

4. Europol is currently a body established by a multilateral Convention between the Member States. On 20 December 2006 the Commission presented a proposal for a Council Decision converting Europol into an agency of the EU, funded from the Community budget. After much discussion and amendment, political agreement was reached on a text at the Justice and Home Affairs Council on 18 April 2008; the Decision is expected to be adopted later in November 2008 and will come into force on 1 January 2010.⁸ This is therefore a good time for us to consider what Europol has achieved under its current constitution, and how it might best progress in future.

Conduct of the inquiry

5. This inquiry has been conducted by Sub-Committee F, a list of whose members is set out in Appendix 1. They issued a call for written evidence in March 2008; this is reproduced in Appendix 2. In reply they received evidence from thirteen persons and bodies. Between May and July 2008 they heard oral evidence from thirty witnesses. They visited the headquarters of Europol and Eurojust in The Hague, and the following day held four evidence sessions in Brussels. The witnesses included representatives of the Commission, a Member of the European Parliament and the EU Counter-terrorism Coordinator. A full list of all the witnesses is in Appendix 3. To all those who helped in the arrangement of these visits, and to all the witnesses, we are most grateful.
6. Throughout the inquiry we have had as our specialist adviser Kevin O'Connell, a former Deputy Director of Europol. His unrivalled knowledge of the subject has been of the greatest assistance to us. We are very grateful for all his help.

Structure of this report

7. In the next chapter we look at the constitution of Europol as it has evolved, and at how it will shortly change. In Chapters 3 and 4 we examine the objectives, structure and working methods of Europol, and in Chapter 5 its governance and accountability. Chapter 6 considers its relations with its partners, and is followed by three chapters looking at security, data protection and a number of other issues. Finally in Chapter 10 we summarise our conclusions and recommendations.
8. **We recommend this report to the House for debate.**

⁵ *Europol: Third Country Rules* (29th Report, Session 1997–98, HL Paper 135).

⁶ *European Union Databases* (23rd report, Session 1998–99, HL Paper 120).

⁷ *Europol's Role in Fighting Crime* (5th report, Session 2002–03, HL Paper 43)

⁸ In EU terminology the date of entry into force of the Decision (as of other legal instruments) is shortly after its publication in the Official Journal, whereas 1 January 2010 is the date from which it is applicable. Here and throughout this report we refer to 1 January 2010 as the date of entry into force, using the clearer terminology which applies to United Kingdom legislation, and indeed to international legal instruments like the Europol Convention and its Protocols.

CHAPTER 2: THE EVOLVING CONSTITUTION

The establishment of Europol

9. The first high level suggestion that the Member States of the European Union had a common interest in the fight against serious crime was an initiative of the German Chancellor Helmut Kohl at the Luxemburg European Council in June 1991. He suggested that one of the aims of the Inter-Governmental Conference in Maastricht in December that year should be to have Treaty commitments on the fight against drug trafficking and organised crime. The minutes record that “The European Council noted with interest the practical proposals submitted by the German delegation,⁹ which supplement the work already carried out in this area. The European Council agreed on the objectives underlying these proposals and instructed the Conference to examine them further with a view to revision of the Union Treaty”.
10. Under the heading DRUGS the minutes continue: “Regarding the fight against international drug trafficking and organized crime, the European Council has agreed on the objectives underlying the German delegation’s proposals ... and requests the Ministers with responsibility for drugs matters to submit proposals before the European Council’s next meeting in Maastricht.”
11. As a result, when the Maastricht Treaty was signed on 7 February 1992 it included in the new Title VI a provision, Article K1(9), that Member States should regard as a matter of common interest “police cooperation for the purposes of preventing and combating terrorism, unlawful drug trafficking and other serious forms of international crime, including if necessary certain aspects of customs cooperation, in connection with the organization of a Union-wide system for exchanging information within a European Police Office (Europol).”
12. This provision recorded the agreement of the—then twelve—Member States on the setting up of a European Police Office, but it was not a legal basis for establishing such an Office. Article K3(2) required the Council to draw up a Convention and recommend it to the Member States for adoption. The negotiations resulted in the signature on 26 July 1995 of a Convention on the Establishment of a European Police Office—the Europol Convention.¹⁰ This was a document which gave great prominence to easing the exchange of information and to the provision of analysis in support of criminal investigation. But by then there were fifteen Member States whose ratification of the Convention was needed before it could come into force. The ratifications were slow in coming and Belgium, the last State to ratify, did not do so until June 1998. In accordance with Article 45(3) of the Convention, it entered into force on 1 October 1998.¹¹ Europol began

⁹ The initiative is summarised as follows in the Council minutes: “Treaty commitment to full establishment of a Central European Criminal Investigation Office (“Europol”) for these areas by 31.12.1993 at the latest. Details to be laid down by unanimous decision of the Council. Gradual development of Europol functions: first of all relay station for exchange of information and experience (up to 31.12.1992), then in the second phase powers to act also within the Member States would be granted. Rights of initiative for the Commission and also for individual Member States.”

¹⁰ OJ C316 of 27.11.1995, p. 2.

¹¹ At the same time there entered into force a Protocol on the interpretation of the Convention by the Court of Justice, and a second Protocol on the privileges and immunities of Europol and its staff (Protocol of 24 July 1996 on the interpretation, by way of preliminary rulings, by the Court of Justice of the European Communities of the Convention on the establishment of a European Police Office (OJ C 299 of 9.10.1996, p. 2), and Protocol of 19 June 1997 on the privileges and immunities of Europol, the members of its organs, the deputy directors and employees of Europol (OJ C 221 of 19.7.1997, p. 2)).

operations from its headquarters in The Hague on 1 July 1999, at which point it also took over the work of a European Drugs Unit which since 1994 had been in operation without any formal constitution or powers.

13. The Convention is still the instrument governing the constitution of Europol and its work; but, as we record below, it has been significantly amended. In little more than a year it will be replaced by the Council Decision. In the course of this report we consider the changes which this will make to the constitution of Europol and to its work.

The disadvantages of a Convention

14. The Convention, like any other treaty, can only be amended either in accordance with its own provisions, or by another treaty, and therein has lain the problem. An Annex to the Convention contains a list of the crimes to which the Convention can apply, and definitions of them; and Article 43(3) allows the Council to amend them. There has been a Council Decision amending the definition of “traffic in human beings” to include child pornography.¹² However this is the only form of change which the Convention itself has allowed the Council to make. Other and more substantial changes have needed an amendment to the Convention by further Protocols, each of them, like the Convention, subject to ratification by all the Member States which were signatories.¹³
15. In November 2000 a Protocol was signed adding money-laundering to the list of crimes,¹⁴ and two years later a further Protocol was signed allowing Europol staff to participate in Joint Investigation Teams, something we consider in paragraphs 109 to 112.¹⁵ In July 2002 the Danish Presidency published proposals for a much more substantial Protocol,¹⁶ extending Europol’s remit, streamlining its methods of operation, and completely re-writing the nature of the crimes within Europol’s competence (and hence superseding the first of these Protocols). This third Protocol—the Danish Protocol—also gives Europol wider access to personal data, and facilitates data transfers to third countries. The Protocol was signed in November 2003,¹⁷ but over three more years were to elapse before any of these Protocols was ratified. It is hard to know why Member States troubled to

¹² Council Decision of 3 December 1998 supplementing the definition of the form of crime “traffic in human beings” of the Convention on the establishment of a European Police Office (Europol Convention) (OJ C 26 of 30.01.1999, p. 21).

¹³ For the accession to the Europol Convention of the 12 Member States which have joined the EU subsequently, no ratification has been necessary beyond that needed for the respective Treaties of Accession. The ten new Member States which acceded in May 2004 undertook in their Act of Accession to accede to the Europol Convention, and there was no further ratification requirement. Seven of those States acceded on 1 September 2004, Malta and Poland by the end of the year, and Estonia on 1 July 2005. Bulgaria and Romania acceded to the Europol Convention on 1 August 2007 in accordance with Article 3(3) of their Act of Accession and the Council Decision adopted under Article 3(4).

¹⁴ Protocol of 30 November 2000, drawn up on the basis of Article 43(1) of the Convention on the establishment of a European Police Office (Europol Convention) amending Article 2 and the Annex to that Convention (OJ C 358 of 13.12.2000, p. 2).

¹⁵ Protocol of 28 November 2002 amending the Convention on the establishment of a European Police Office (Europol Convention) and the Protocol on the privileges and immunities of Europol, the members of its organs, the deputy directors and the employees of Europol (OJ C 312 of 16.12.2002, p. 2).

¹⁶ OJ C 172 of 18.7.2002, p. 15.

¹⁷ Protocol of 27 November 2003, drawn up on the basis of Article 43(1) of the Convention on the Establishment of a European Police Office (Europol Convention), amending that Convention (OJ C 2 of 6.1.2004, p. 3).

ratify the first at all. However it duly came into force on 29 March 2007, to be superseded less than three weeks later when the 2003 Protocol came into force on 18 April 2007, nearly five years after the original Danish proposals.

16. These problems arose because, as we have explained in paragraph 11, at the time Europol was set up there was no Treaty base allowing it to be established otherwise than by a Convention between the Member States. No problem would have arisen after the entry into force on 1 May 1999 of the Treaty of Amsterdam, since this completely re-wrote Title VI of the Treaty on European Union, adding a new Article 30(2) which not merely allowed but required the Council to take major steps in the development of Europol, in particular to support investigation in “specific” cases.

BOX 2

Article 30 (2) of the Treaty on European Union

The Council shall promote cooperation through Europol and shall in particular, within a period of five years after the date of entry into force of the Treaty of Amsterdam:

- (a) enable Europol to facilitate and support the preparation, and to encourage the coordination and carrying out, of specific investigative actions by the competent authorities of the Member States, including operational actions of joint teams comprising representatives of Europol in a support capacity;
- (b) adopt measures allowing Europol to ask the competent authorities of the Member States to conduct and coordinate their investigations in specific cases and to develop specific expertise which may be put at the disposal of Member States to assist them in investigating cases of organised crime;
- (c) promote liaison arrangements between prosecuting/investigating officials specialising in the fight against organised crime in close cooperation with Europol;
- (d) establish a research, documentation and statistical network on cross-border crime.

17. Paragraph (c) of Article 30(2) is significant. This is the long-awaited coalescence of law enforcement and justice in the fight against serious crime, which ultimately led to the partnership with Eurojust which we describe in Chapter 6. The contrast between the creation of Europol and Eurojust is instructive. Although the idea of an EU judicial cooperation unit was first suggested by what is now the Article 36 Committee¹⁸ in 1996, it was only after the entry into force of the Treaty of Amsterdam that a decision was taken at the European Council at Tampere in 1999 to set up a body with the task of coordinating the activities of national prosecuting authorities and supporting criminal investigations in organised crime. Eurojust therefore could be, and was, set up by a Council Decision;¹⁹ this Decision could be amended by the Council in the same way, and indeed the budgetary provisions were amended barely a year later by a further Council Decision.²⁰ Eurojust has therefore suffered none of the problems of being established by a Convention which have afflicted Europol from the outset.

¹⁸ The Coordinating Committee of senior officials set up under Article 36 of the TEU to advise on Title VI matters (police and judicial cooperation in criminal matters), also known as CATS from its French acronym.

¹⁹ Council Decision 2002/187/JHA of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime (OJ L 63 of 6.3.2002, p. 1).

²⁰ Council Decision 2003/659/JHA of 18 June 2003 amending Decision 2002/187/JHA setting up Eurojust with a view to reinforcing the fight against serious crime (OJ L 245 of 29.9.2003, p. 44).

The Council Decision

18. In February 2006 the Austrian Presidency set up a “Friends of the Presidency” Group to discuss the future of Europol. When the Group reported in May 2006 it complained that because of Europol’s legal basis “changing provisions of even minor importance has proven to last five years and longer. Particularly in comparison to younger institutions like Eurojust or CEPOL this becomes an obvious and unnecessary disadvantage ... A delay of more than five years for putting a minor change to Europol’s mandate into effect is clearly not tolerable.”²¹ Of the 76 changes to Europol’s constitution and functions suggested by the Group, nearly half would have required amendment of the Convention.
19. This report was discussed on 1–2 June 2006 by the JHA Council, which concluded that work should begin on considering whether and how to replace the Europol Convention by a Council Decision. On 5 January 2007 the Commission brought out a Proposal for a Council Decision establishing the European Police Office.²² Negotiations on the proposal lasted a year, but a political agreement was reached on 18 April 2008. This Committee indicated to the Minister that his agreement on behalf of the United Kingdom need not be withheld despite the fact that the Decision was being kept under scrutiny during the currency of our inquiry. As we have said, the Decision is expected to be adopted later in November 2008 and will enter into force on 1 January 2010—two years after the date optimistically suggested by the Council in June 2006, but well before any amendment to the Convention would have had a chance of entering into force.
20. Peter Storr, the International Director at the Home Office who is also the United Kingdom member of the Article 36 Committee, told us that the United Kingdom was a member of the Friends of the Presidency Group, and thought that “the way in which Europol was originally structured was inflexible and rather bureaucratic. It meant that if there were new developments, new crime trends and new mandates for Europol, it became a rather cumbersome process for Europol to be able to change its priorities in order to take these on board.” The United Kingdom was “very supportive of the idea of changing the constitutional arrangements for Europol to the present Council Decision”. (Q 20)
21. Mr Storr added a note of caution. “I would not want to over-sell the Council Decision but the changes I think are changes in the right direction. They are modest changes and they reflect the fact that there are different approaches among Member States as to how Europol should be run and governed.” (Q 37) We think his caution is justified, since the changes are indeed modest—in our view, too modest. The transition from the Convention to the Decision was an opportunity for making important changes to the constitution and working of Europol. The changes that were made are for the most part in the right direction, but in this report we explain where we believe opportunities were missed.
22. Because amendment of a Decision is not subject to the legal formality of ratification, **we hope that those of our recommendations which require amendment of the Council Decision will meet with the approval of all the**

²¹ Document 9184/1/06 rev 1 of 19 May 2006.

²² Document 5055/07.

Member States, and can be made so that they enter into force, if not with the entry into force of the Decision on 1 January 2010, then soon after.

What Lisbon might do

23. One reason the Member States were anxious to adopt the Decision before the end of 2008 was that, when the Decision was agreed in April 2008, it was thought certain that the Treaty of Lisbon would be ratified and would come into force on 1 January 2009. The Council Decision is currently a third pillar instrument, adopted by unanimity of the Member States and requiring only consultation of the European Parliament. If the Decision had not been adopted by the end of this year, the merging of the first and third pillars meant that adoption of the Decision would have required co-decision of the Council and the Parliament. Although the Treaty of Lisbon does not include transitional provisions showing exactly what would happen to proposals made and agreed but not adopted before its entry into force, the involvement of the Parliament at that stage would certainly have delayed matters, and might have required amendment of the draft Decision.
24. The other consequence of the entry into force of the Lisbon Treaty would be the application of Article 88 of the Treaty on the Functioning of the European Union (TFEU). This Article reads:²³

BOX 3

TFEU Article 88

1. Europol's mission shall be to support and strengthen action by the Member States' police authorities and other law enforcement services and their mutual cooperation in preventing and combating serious crime affecting two or more Member States, terrorism and forms of crime which affect a common interest covered by a Union policy.

2. The European Parliament and the Council, by means of regulations adopted in accordance with the ordinary legislative procedure, shall determine Europol's structure, operation, field of action and tasks. These tasks may include:

- (a) the collection, storage, processing, analysis and exchange of information, in particular that forwarded by the authorities of the Member States or third countries or bodies;
- (b) the coordination, organisation and implementation of investigative and operational action carried out jointly with the Member States' competent authorities or in the context of joint investigative teams, where appropriate in liaison with Eurojust.

These regulations shall also lay down the procedures for scrutiny of Europol's activities by the European Parliament, together with national Parliaments.

3. Any operational action by Europol must be carried out in liaison and in agreement with the authorities of the Member State or States whose territory is concerned. The application of coercive measures shall be the exclusive responsibility of the competent national authorities

²³ The article was originally Article III-276 of the Constitution Treaty.

Thus the TFEU would give Europol a remit differently expressed and in some respects wider than the Decision. We consider Europol's mandate in detail in the following chapter. The TFEU would also introduce a provision on accountability to the European Parliament and national Parliaments, something we deal with in Chapter 5.

The Future Group

25. In January 2007, at the outset of the German Presidency, the German Minister of the Interior, Dr Wolfgang Schäuble, convened an informal JHA Council in Dresden. One of the purposes was “the creation of an informal Group at ministerial level with the objective to consider the future of the European area of justice, freedom and security”. The members of the Group, which became known as the Future Group, were ministers from what were then the two current trios of Presidencies (Germany, Portugal, Slovenia; France, Czech Republic, Sweden); a representative of the future Presidency trio (Spain, Belgium and Hungary); and an observer from the United Kingdom, representing the common law countries.
26. The Group reported in June 2008,²⁴ and a significant part of their report is devoted to Europol.²⁵ They summarised their conclusions on Europol as follows:

BOX 4

Future Group: Extract from the Executive Summary

Europol is to function as close partner and focal point for national police forces at the European level. Improving data transfers from Member States to Europol is necessary if it is to become a genuine information platform for Member States. The requirement of the so-called “Swedish” framework decision of 18 December 2006,²⁶ aiming at better information sharing, could be fulfilled by means of creating automatic data transfer instruments. Furthermore, Europol should be, within its legal framework, increasingly used and expanded into a competence centre for technical and coordinative support.

27. The proposals of the Future Group show that some of the Member States most supportive of Europol are themselves already considering amendments to the Decision. This confirms us in our view that it is realistic for us to make recommendations which, to be implemented, would also require amendment of the Decision.

Interpol and SitCen

28. We mentioned at the start of the report that Europol is sometimes assumed to be a European police force. It is also often confused in the mind of the public, and indeed in the mind of the police, with Interpol.

²⁴ Freedom, Security, Privacy—European Home Affairs in an open world—Report of the Informal High-Level Advisory Group on the Future of European Home Affairs Policy (“The Future Group”), Document 11657/08.

²⁵ Paragraphs 38–53.

²⁶ Council Framework Decision 2006/960/JHA of 18 December 2006 on simplifying the exchange of information and intelligence between law enforcement authorities of the Member States of the European Union, OJ L 386 of 29.12.2006, p. 89.

BOX 5**Interpol**

Interpol, based in Lyon, is a world-wide international police organisation divided into global regions, of which Europe is one. It was created in 1923, and now has 187 member countries. Interpol facilitates cross-border police cooperation, and supports and assists all organisations, authorities and services whose mission is to prevent or combat international crime. Interpol and Europol share an interest in categories of crime such as terrorism, drugs and organised crime, trafficking in human beings and financial and high-tech crime. In addition, Interpol supports law enforcement officials in the field with emergency support and operational activities, especially in its priority crime areas, pursuit of fugitives, and assuring public safety.

Interpol's databases include data on criminals such as names, fingerprints and DNA profiles, and stolen property such as passports, vehicles and works of art; this information relates to crimes which have already taken place, and the data are often placed on the databases as a result of legal proceedings which require the identification of criminals or the return of stolen property.

In the event of a disaster or major crime, Interpol can dispatch response teams of officers to the scene to help deal with the crisis. Major events support teams can also help member countries with the policing of high profile conferences or sporting events.²⁷ Europol has no equivalent power.

We discuss in Chapter 6 the relationship between Europol and Interpol.

29. The Council Decision setting up Europol is based on the third pillar of the Treaty on European Union (Justice and Home Affairs). Under the second pillar (Common Foreign and Security Policy) there is a Situation Centre (SitCen) which was established under the aegis of the Council Secretariat in Brussels to undertake a common assessment of particularly critical issues in relation to the Union's foreign policy. The European Council agreed that from January 2005 a counter-terrorism group should be established within SitCen. We explain in paragraph 122 why we believe that SitCen is better adapted than Europol to the exchange of intelligence between security agencies.²⁸

²⁷ In the context of its inquiry following the Madrid bombings of March 2004 the Committee took oral evidence from the Secretary General of Interpol, Mr Ron Noble, and at his invitation visited the Interpol headquarters in Lyon. For further information about Interpol see our report *After Madrid: the EU's response to terrorism* (5th Report, Session 2004–05, HL Paper 53), Chapter 6 and QQ 326–360.

²⁸ In the context of its inquiry following the Madrid bombings of March 2004 the Committee also visited Brussels and took oral evidence from the Director of SitCen: see our report *After Madrid: the EU's response to terrorism* (5th Report, Session 2004–05, HL Paper 53), Chapter 5 and QQ 148–189.

CHAPTER 3: OBJECTIVES AND STRUCTURE

Objectives and competence

30. For Europol, as for many organisations, there is a distinction between its objectives—what it aims to achieve—and its competence—the powers it has to achieve those objectives. In the Convention Article 2, though headed simply “Objective”, deals with competence as well. It sets out the objective of Europol as being “to improve, by means of the measures referred to in this Convention, the effectiveness and cooperation of the competent authorities of 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.” In other words, any crime which is not organised crime is currently outside Europol’s objectives, and hence its competence.
31. This has for some time been seen as an unnecessary and unsatisfactory restriction. The expression “the fight against organised crime” is used in TEU Article 30(2)(c) and is a useful summary of Europol’s work, but it should not be seen as limiting Europol’s competence. The Austrian Friends of the Presidency Group which, as we explained in the previous chapter, was the spur for the Council Decision, put forward two alternative formulations of Europol’s mandate, neither of which included the expression “organised crime”.
32. There is in our view another reason for avoiding the expression “organised crime”. Rob Wainwright, the Deputy Director for international matters at the Serious Organised Crime Agency (SOCA), explained that “Organised crime does not always carry any definition. In many countries, their definition of organised crime can be different.” He told us that the Serious Organised Crime and Police Act 2005 has no definition of “serious” or “organised” “because it is not a term that is recognised within UK law”. (Q 76)
33. This Committee was highly critical of the use of “organised crime” in the draft Council Framework Decision on the use of the Passenger Name Record (PNR) for law enforcement purposes.²⁹ Like the Friends of the Presidency Group we believe that, so long as those words lack a common definition, it would have been more satisfactory to define Europol’s competence without resorting to that expression.
34. The Friends of the Presidency Group also thought that Europol would benefit from a clearer distinction between its objectives, competences and tasks. This is not a question of semantics, as was made clear to us by David Smith, the Deputy Information Commissioner, who was giving evidence to us as Chairman of the Europol Joint Supervisory Body: “If you are checking on whether there is a legal basis for the processing of data at Europol, where do you go to? To the competences or to the objectives? ... the objectives talked simply about organised crime, whereas we have always been keen that Europol is confined to cross-border crime.” He gave us as an example the

²⁹ *The Passenger Name Record (PNR) Framework Decision* (15th Report, Session 2007–08, HL Paper 106, paragraphs 38–40).

on the loose. Mr Wilson thought that in such a case there was a role for Europol to assist on a bilateral or trilateral basis. (p 60, Q 137)

39. At the same time, he was the only one of our witnesses to sound a note of caution about the expansion of Europol's mandate. He told us that if he were writing an open letter to the next Director of Europol or Chairman of the Management Board, he would be fairly modest in what he was expecting the organisation to do. The statistics had in his view to be treated with caution. It had to be remembered that most crime was local, and more than 75% of crime that was investigated forensically occurred and was solved within one police area. The work that Europol and SOCA were doing, though important, concerned only quite a small amount of criminal activity. (Q 134)
40. We do not ourselves share Mr Wilson's concerns. The significance of the crimes seems to us to be paramount. Like Mr Storr, **we believe that where Europol is likely to have information or intelligence which will facilitate the investigation and detection of crimes, those are crimes which should fall within Europol's mandate.**
41. **In our view it is therefore right that Article 4 of the Europol Decision will not limit the mandate of Europol to "organised crime". As drafted, in our view it gives as good a definition of the crimes which should fall within its competence as is likely to be achievable.**

National units and liaison officers

42. Liaison between Europol and the "competent national authorities" takes place through a national unit. In the original Convention the "competent authorities" were undefined. Since the entry into force of the Danish Protocol they are defined as "all public bodies existing in the Member States which are responsible under national law for preventing and combating criminal offences." This definition is adopted in the Decision. Plainly it goes much wider than just police, and will cross ministerial boundaries in the United Kingdom and most other Member States.
43. The national unit is the single point of contact between Europol and each Member State to coordinate its law enforcement activities and interests with Europol. For the United Kingdom SOCA is that national unit.

BOX 6

SOCA

SOCA, the Serious Organised Crime Agency, was set up by the Serious Organised crime and Police Act 2005, and assumed its full functions in April 2006. It is an intelligence-led law enforcement agency with harm reduction responsibilities. The most damaging sectors to the UK are judged to be trafficking of Class A drugs, organised immigration crime and fraud. Other threats within the remit of SOCA include high tech crime, counterfeiting, the use of firearms by serious criminals, serious robbery, organised vehicle crime, and cultural property crime—but, significantly, not terrorism.³⁰

³⁰ When we took oral evidence from the Directors of SOCA we put to them the point that the requirement for banks, estate agents, lawyers and others to make suspicious activity reports was too widely drawn. We were told that there were indeed one million records on the database, but that it was a very useful database enabling SOCA "to identify, for example, very quickly, criminal networks involved in the laundering of money, and the MTIC fraudsters, the so-called carousel VAT fraudsters". We accept that since the making of suspicious activity reports is a requirement under the Proceeds of Crime Act there is no possibility of an immediate change, but we caution against the possibility of SOCA being inundated with enormous volumes of data, much of which might related to matters other than serious crime. (QQ 78–80)

44. Mr Wainwright explained that within SOCA it was the International Department which was responsible not only for Europol but also for the other international channels of police cooperation in the United Kingdom. It was an integrated part of a bureau that also included Interpol, the European Arrest Warrant functions in the European Union, and a very large bilateral network of liaison officers around the world (some 140 in 40 countries). (Q 62) Liaison with Europol originally took place only through the national unit, but since the entry into force of the Danish Protocol Member States may allow direct contact between other “designated competent authorities” and Europol.³¹
45. The only disadvantage of having SOCA as the United Kingdom national unit is that it has no counter-terrorism remit.³² Sir Ronnie Flanagan, the Chief Inspector of Constabulary, told us: “... it is absolutely crucial that we in the UK have a one-stop shop. I cannot think of a better body or a more appropriate body than SOCA in that national sense. Undoubtedly, it does have shortcomings. SOCA, for example, has no remit in relation to counter-terrorism, so suddenly you find our Met colleagues, who have very much an international remit in that regard, deploy representatives to Europol quite outside SOCA ... They [the Met] have one [liaison officer] and have imminent plans for a second one to be embedded.” (QQ 379–380)
46. **While we accept that SOCA is best placed to act as the United Kingdom national unit, the fact that it has no counter-terrorism remit makes it all the more important that it should work very closely with the Metropolitan Police and other forces which do have such a remit.**
47. Each national unit is required to second at least one liaison officer to Europol, and these, having one foot in each of the Europol and national unit camps, are the main source of personal contact. The United Kingdom currently has eight staff at the Liaison Bureau representing SOCA, the Metropolitan Police, HM Revenue and Customs (HMRC) and the Scottish Crime and Drugs Enforcement Agency. The cost is in the region of £150,000 per annum per officer. Other large Member States have similar sized teams.
48. The Home Office saw the liaison bureau as an essential component of supporting Member States’ law enforcement activity, providing as it does a direct link between Europol and the Europol national unit in the home country. (p 3) SOCA was equally enthusiastic: “The unique value offered by the Europol network derives from the co-location of liaison officers from all 27 Member States in one centre, allowing in particular for operational coordination across multiple (i.e. more than two) borders. This works well for the UK in over 500 cases each year. Notable successes in recent years include the disruption of a criminal organisation involved in international drug trafficking and money laundering, operating across six countries, which led in February 2008 to the arrest in London of 22 suspects, the seizure of

³¹ Convention, Article 4; Decision, Article 8.

³² Sir Stephen Lander, the Chairman of SOCA, is a former Director-General of MI5, but this is coincidental. William Hughes, the Director-General of SOCA, is a former Director General of the National Crime Squad, while Rob Wainwright, the International Director of SOCA, was formerly Director of the International Division of the National Criminal Intelligence Service (NCIS).

125kg of cocaine, and the recovery of a substantial amount of cash and firearms.”(p 26)

Bypassing Europol

49. There is however a downside. With every Member State³³ having a number of liaison officers located within the same building it is inevitable, and plainly desirable, that informal contacts should be built up between them, particularly since these can deal with matters outside the competence of Europol. It is also inevitable that some exchanges of information should take place between liaison officers without involving Europol at all, even though dealing with matters within its competence; and a question which has exercised us is the extent to which this takes place, and whether this too is desirable.
50. We were astonished to read in the Home Office written evidence (p 3) that “the vast majority of information exchanges between liaison bureaux occurs outside the formal systems, and thus while providing very significant benefit to the participating countries the main loser is Europol, which is denied the opportunity to access the information. It is reported that up to 80% of bilateral engagement occurs this way”—a figure confirmed by Mr Ratzel. (Q 181)
51. The Home Office evidence explained that the fact that Europol is deprived of a huge amount of intelligence data is a matter of concern to them, and something they feel should be addressed. They told us that the United Kingdom is prepared to take a lead on improving the amount of bilateral exchange material shared with Europol, but that the other partner to the bilateral exchange must be similarly disposed, or else the United Kingdom could find itself frozen out of bilateral engagement. (p 3)
52. We too are concerned that such a very large proportion of information is exchanged without Europol being in any way involved. In our view Europol itself is only one of the losers; the others are all the Member States not party to these bilateral or multilateral exchanges, since they will not have access through Europol to the information, or be able to contribute to it. Their inability to contribute may also be detrimental to the Member States involved in the exchanges. It seems, as Sir Ronnie Flanagan said, that the very success of bilateral approaches can leave the Member States involved in the dialogue happy despite the centre remaining in ignorance of what is going on. (Q 397)
53. We accordingly questioned a number of our witnesses about this, including Mr Storr. He told us that if intelligence suggests that there is a European dimension involving activities of criminal organisations in a number of Member States, SOCA will take a decision as to whether to involve the SOCA liaison officers based at Europol, or whether “if it is a particularly serious case” to involve Europol’s full facilities, including analytical capacity and the ability in particular operations to open an analysis work file. (Q 5) He added: “I do not think the 80 per cent and 20 per cent are necessarily referring to the same type of operational activity. There may be some, in fact a large number, where you would simply have a particular piece of criminal activity that involved two, three or four Member States. If that is possible to

³³ and a number of other States and bodies: see Chapter 6.

solve within the liaison officer arrangements, then that probably is a more efficient way of doing it than inviting Europol formally to take charge of coordination arrangements. I think SOCA and indeed other Member States' competent authorities will constantly be asking themselves: what will get us best value out of those arrangements? Is it using the liaison officer function or is it inviting Europol to open an analytical work file or otherwise to provide assistance of a specialist nature or good quality analysis?" (Q 55)

54. Assistant Chief Constable Nick Gargan thought we had "a very generous and high quality set of arrangements in terms of SOCA liaison officers" for bilateral inquiries. (Q 369) Mr Wainwright told us that the liaison bureau was a "very effective" network of which the United Kingdom was "a good user ... the second or third highest between the 27 Member States". But he thought it "over-simplistic" to compare what was obtained through the liaison officer network with what might be obtained from the main body of Europol itself, adding that "in almost all of those cases there will have been a supporting involvement of Europol, and therefore it is not so easy to separate the two." (Q 69) Even if such a comparison is over-simplistic, it is still the case that 80% of the information is obtained directly through liaison officers at a cost to the United Kingdom of approximately €2 million a year, while the remaining 20% which comes through Europol costs this country €9.6 million. (Q 32)³⁴
55. Our own concerns about the bypassing of Europol were echoed by other witnesses. Sir Ronnie Flanagan thought that "... if [intelligence] is not channelled through the centre, if it is not channelled through the mechanisms and structures we have created, there is a great risk that those gaps result in a less than efficient ability on the part of others, not originally engaged in a particular bilateral." (Q 399) The point was even more forcefully made by Professor Monica den Boer of the Vrije Universiteit (VU) Amsterdam: "I keep emphasising this point, Europol depends on being fed with intelligence from the Member States. As long as the Member States keep the intelligence to themselves it just will not happen, so the culture of change will have to take place there rather than within Europol itself." (Q 155)
56. The Friends of the Presidency Group asked for a Management Board decision allowing the use of Europol's secure ICT infrastructure for bilateral exchanges of information between the Member States, using Europol as service provider; they suggested that where possible information exchanged bilaterally should be included in appropriate Europol databases.³⁵
57. **We agree with the Friends of the Presidency Group that it is highly desirable that bilateral exchanges of information should be recorded on Europol secure databases. The Management Board should give this serious and urgent consideration.**

A question of trust

58. The Home Office thought it was not particularly clear why so much information was not channelled through Europol; it was likely to be a

³⁴ The figures given by Mr Wainwright in answer to Q 103 are rather different, but this does not affect our argument.

³⁵ Recommendation 19.

combination of factors, but “there is the issue that tends to pervade all information exchange between countries and Europol, the issue of “confidence and trust” in handling and protecting the data”. (p 3) Mr Storr amplified this in oral evidence: “I think more needs to be done to convince Member States of the added value that Europol can provide, and indeed the integrity ... and the security of their information systems.”(Q 55)

59. In connection with the analysis work files, which we consider in the following chapter, the Home Office said: “... although there is no evidence of Europol’s systems being insecure, we recognise a reluctance on the part of many Member States to share what is very sensitive information, especially in the early stages of an investigation and the information gathering process, where any leak could compromise the investigation.”(p 5) Where sensitive material was compromised it was not only prosecution cases that were jeopardised; lives which might be put at risk, a point made both by Sir Ronnie Flanagan and by Chief Constable Ken Jones, the President of the Association of Chief Police Officers (ACPO). (QQ 385–386, 392) HMRC said bluntly: “... there is still a strong reluctance from HMRC to share sensitive intelligence with other Member States through Europol channels. The Fiscal Crime Liaison Officer Network is the preferred route.”(p 205)
60. “Confidence”, “security”, “integrity”—these words in our view all point to a lack of trust as being the main reason why the central Europol system is so often bypassed. Any information going into the system goes, potentially, to the national units of 27 Member States, and thence to their “competent authorities”, potentially all their law enforcement authorities. While there is undoubtedly an element of convenience in simply discussing problems and sharing information with only a few other liaison officers, in the case of more sensitive information this may be thought not just desirable but essential and, we would add, entirely understandable. But it entails the major disadvantage that, unless and until that information is shared with Europol and with States other than those known to be involved, it will not be apparent whether there is a benefit to be derived from making it available for analysis by Europol or other Member States.
61. Mr Augustin Diaz de Mera MEP, the member of the LIBE Committee of the European Parliament³⁶ who acted as rapporteur for the draft Council Decision, told us: “Europol was created in 1995, which is almost 13 years ago, and we have not been able to reach the kind of trust level that we wanted ... there has been a problem of not being able to share enough information and intelligence between Member States ... It is not a problem of the Member States, but rather of their special services not being able to trust each other as much as they should. The key is trust.”(Q 273)

Our conclusions

62. **There is a lot to be said for building up bilateral and multilateral contacts between national liaison officers. It is the first and most important step in the development of trust between them.**
63. **However, for Member States to share information in a limited way through liaison officers is the antithesis of the purpose of Europol, which is the enhancement of the already existing combined effort of**

³⁶ The Committee on Civil Liberties, Justice and Home Affairs.

the Member States' competent authorities so that the whole is greater than the sum of its parts. Limited sharing of information will not achieve a common approach to cross-border cooperation against serious crimes.

64. **The Home Office tell us that the United Kingdom is prepared to take a lead in improving the amount of material shared with Europol. (p 3) We look forward to hearing in the Government's response to this report precisely what steps they intend to take to bring this about.**
65. We consider in Chapter 7 how trust might be improved.

CHAPTER 4: WORKING METHODS

Intelligence-led policing

66. Intelligence-led policing has spawned an array of acronyms of which even the police can be proud, but the concept itself is simple: using today's knowledge to shape tomorrow's policing.
67. In this country the expression "intelligence-led policing" was originally used to describe an approach to crime reduction that moved resources away from retrospective crime investigations into pre-emptive operations based on analysed intelligence. Rather than reacting to events as they happen, intelligence-led policing uses the knowledge already acquired to determine crime trends and patterns, and criminal activities in progress, and uses that body of information to influence the directions the police go in targeting particular individuals, activities, geographical locations and the like.
68. This change was implemented within police organisations by the adoption of an "intelligence model" which described the different roles, responsibilities and procedures in an intelligence-led policing environment. When this was adopted nationally in the United Kingdom it became known as the National Intelligence Model (NIM). The ACPO Code of Practice on the NIM, issued in January 2005 by the Home Secretary under the Police Reform Act 2002, provided a statutory basis for the introduction of NIM minimum standards and its basic principles. This "intelligence-led approach" was supported by additional funding and made the subject of time limits for implementation. The process was described to us by Sir Ronnie Flanagan. (Q 364)
69. In November 2004 the Hague Programme adopted the goal of setting up and implementing a methodology for intelligence-led law enforcement at EU level, and introduced a new Organised Crime Threat Assessment (OCTA) as a first step. The United Kingdom held the Presidency of the EU in the second half of 2005, and Mr Storr told us that there were two key objectives: to try to establish intelligence-led policing as a concept within Europe, and to ensure that intelligence and the analysis of that intelligence led to a good quality threat assessment. Two things were achieved: one was the adoption of a new and better Organised Crime Threat Assessment (OCTA), and the other the adoption of a European Criminal Intelligence Model (ECIM), a business model for intelligence-led policing at the international level, based on the NIM. "The idea of actually using intelligence to identify and spot crime trends and to uncover operations of criminal activity in progress and to take necessary pre-emptive action were all interesting changes ... we had to work hard to convince some European partners that it was worth doing, but we managed to get it adopted."(Q 10)
70. Their hard work was rewarded when in October 2005 the JHA Council adopted the Presidency's Conclusions on proposals for intelligence-led policing. This was one of the three main matters listed in the summary of results of the Council. The Conclusions stated:³⁷

³⁷ Document 12645/05, pp 13–15.

