

Procedure file

Basic information		
CNS - Consultation procedure Decision	2006/0310(CNS)	Procedure completed
EUROPOL: establishing the European Police Office		
Repealed by 2013/0091(COD)		
Subject		
7.30.05.01 Europol, CEPOL		
8.40.08 Agencies and bodies of the EU		

Key players			
European Parliament	Committee responsible	Rapporteur	Appointed
	LIBE Civil Liberties, Justice and Home Affairs		25/01/2007
		PPE-DE DÍAZ DE MERA GARCÍA CONSUEGRA Agustín	
	Committee for opinion	Rapporteur for opinion	Appointed
	BUDG Budgets		20/09/2004
		PSE HAUG Jutta	
	AFCO Constitutional Affairs		01/03/2007
		PPE-DE SCHÖPFLIN György	
Council of the European Union	Council configuration	Meeting	Date
	Justice and Home Affairs (JHA)	2936	06/04/2009
	Justice and Home Affairs (JHA)	2863	18/04/2008
	Justice and Home Affairs (JHA)	2853	28/02/2008
	Justice and Home Affairs (JHA)	2838	06/12/2007
	Justice and Home Affairs (JHA)	2827	08/11/2007
	Justice and Home Affairs (JHA)	2807	12/06/2007
	Justice and Home Affairs (JHA)	2794	19/04/2007
European Commission	Commission DG	Commissioner	
	Justice and Consumers	FRATTINI Franco	

Key events			
20/12/2006	Legislative proposal published	COM(2006)0817	Summary
01/02/2007	Committee referral announced in Parliament, 1st reading/single reading		
19/04/2007	Debate in Council	2794	
12/06/2007	Resolution/conclusions adopted by Council		Summary
08/11/2007	Debate in Council	2827	
12/11/2007	Vote in committee, 1st reading/single reading		Summary

15/11/2007	Committee report tabled for plenary, 1st reading/single reading	A6-0447/2007	
06/12/2007	Debate in Council	2838	Summary
16/01/2008	Debate in Parliament		
17/01/2008	Results of vote in Parliament		
17/01/2008	Decision by Parliament, 1st reading/single reading	T6-0015/2008	Summary
28/02/2008	Debate in Council	2853	Summary
06/04/2009	Act adopted by Council after consultation of Parliament		
06/04/2009	End of procedure in Parliament		
15/05/2009	Final act published in Official Journal		

Technical information

Procedure reference	2006/0310(CNS)
Procedure type	CNS - Consultation procedure
Procedure subtype	Legislation
Legislative instrument	Decision
	Repealed by 2013/0091(COD)
Legal basis	Treaty on the European Union (after Amsterdam) M 030-p1; Treaty on the European Union (after Amsterdam) M 030-p2; Treaty on the European Union (after Amsterdam) M 034-p2c
Stage reached in procedure	Procedure completed
Committee dossier	LIBE/6/44756

Documentation gateway

Legislative proposal		COM(2006)0817	20/12/2006	EC	Summary
Document attached to the procedure		SEC(2006)1682	20/12/2006	EC	
Document attached to the procedure		SEC(2006)1683	20/12/2006	EC	
Document attached to the procedure		52006XX1027(02) OJ C 255 27.10.2007, p. 0013	16/02/2007	EDPS	Summary
Committee draft report		PE386.497	22/03/2007	EP	
Committee opinion	AFCO	PE386.693	03/05/2007	EP	
Amendments tabled in committee		PE388.598	07/05/2007	EP	
Committee opinion	BUDG	PE388.540	22/05/2007	EP	
Document attached to the procedure		SEC(2007)0729	23/05/2007	EC	Summary
Amendments tabled in committee		PE386.727	11/06/2007	EP	
Amendments tabled in committee		PE391.962	16/10/2007	EP	
Committee report tabled for plenary, 1st reading/single reading		A6-0447/2007	15/11/2007	EP	

Text adopted by Parliament, 1st reading/single reading		T6-0015/2008	17/01/2008	EP	Summary
Commission response to text adopted in plenary		SP(2008)1176	27/02/2008	EC	

Additional information

National parliaments	IPEX
European Commission	EUR-Lex

Final act

Justice and Home Affairs act 2009/371
[OJ L 121 15.05.2009, p. 0037](#) Summary

2006/0310(CNS) - 20/12/2006 Legislative proposal

PURPOSE: to establish the European Police Office (Europol) as a Community Agency by altering its legal basis from a ?Convention? to a ?Council Decision?.

PROPOSED ACT: Council Decision.

BACKGROUND: the European Police Office (Europol) is regulated through a 1995 Convention based on Article K.3 of the Treaty on European Union. Since its legal base is Article K.3 its operations, decision making procedures and funding are intergovernmental in nature. This leads to a number of complications. For example, since its establishment, necessary changes have had to be enacted via Protocols (three in total), which require ratification in each of the EU?s Member States. None of the Protocols have been ratified, resulting in the stagnation of important reforms.

CONTENT: the purpose of this proposal is to establish Europol as a Community Agency whose funding stems from the Community budget. In doing so, Europol would be on the same legal and financial footing as Eurojust and CEPOL, the European Police College. Establishing Europol as an agency of the European Union, funded from the general budget of the European Communities will enhance the role of the European Parliament, thereby enhancing the democratic oversight of Europol. In addition, by submitting Europol to the general rules and procedures applicable to other bodies and agencies, administrative simplification will be assured allowing Europol to concentrate more of its resources on its core tasks.

The current proposal aims to establish Europol on the basis of a Council Decision, in which all of the amendments, set out in the three Protocols are incorporated. In order to ensure a smooth transition a significant number of transitional provisions have been included guaranteeing that the process will not interfere with Europol?s operational work and that existing rights of staff are not prejudiced. At the same time, the Decision seeks to ensure full respect of the right to freedom and security; the right to a private and family life; the right to protection of personal data; and lastly to follow the principles of legality and proportionality vis-à-vis criminal offences and penalties.

In order to increase the effectiveness of Europol, the proposal also contains improvements to its mandate and an extension of its tasks, particularly in the field of data processing and data protection. Thus, the Commission proposes to:

- extend the mandate of Europol to criminality, which is not strictly related to organised crime. If adopted it will, however, ease support provided by Europol to Member States in relation to cross-border criminal investigations where involvement of organised crime is not demonstrated from the start;
- allow Europol to receive data from private bodies, in line with recommendation No 22 of the Friends of the Presidency report;
- support Member States organising a major international event and who need to deal with public order policing;
- entitle Europol to manage new information processing tools on, for example, terrorists or paedophiles. The Council will be responsible for determining the conditions related to the processing of personal data;
- allow for the interoperability of data processing systems ? in other words making the Europol system compatible with national systems. This will create the technical conditions needed for a smooth exchange of data. Legal frameworks will be put in place to ensure that such an exchange is in line with Community data protection legislation;
- allow national authorities direct access to the Europol Information System. Under the current system access is only allowed via liaison officers ? however, the procedure is cumbersome and challenging to implement in practices;
- to extend from one year to three storage of Europol data. This reduces the administrative burden on analysts working on this file so that they can focus on their main objective, namely to provide criminal analysis services;
- retain ?Analysis work files? for a maximum of three years and, where necessary, for a further three years;
- establish a Data Protection Officer, who will be completely independent of Europol.

As far as the budgetary implications are concerned, a total of EUR 334 million has been set aside to finance Europol from the Community budget between 2010 and 2013. These figures are consistent with Europol?s five year financing plan. Europol?s annual budget for 2007 is

close to EUR 68 million. The total number of staff employed from the budget, in 2007, will be 406.

For a more detailed analysis of the financial impact of this proposal, refer to financial statement.

2006/0310(CNS) - 16/02/2007 Document attached to the procedure

OPINION OF THE EUROPEAN DATA PROTECTION SUPERVISOR on the Proposal for a Council Decision establishing the European Police Office (Europol).

The Proposal for a Council Decision establishing the European Police Office (Europol) was sent by the Commission to the EDPS for advice on 20 December 2006.

The objective of the proposal is not a major change in the mandate or the activities of Europol, but mainly to provide Europol with a new and more flexible legal basis. However, the proposal also contains substantive changes, so as to further improve Europol's functioning. It extends the mandate of Europol and it contains several new provisions, aiming to further facilitate the work of Europol.

The EDPS understands the need for a new and more flexible legal basis for Europol, but pays specific attention to the substantive changes, the applicable laws on data protection and the growing similarities between Europol and Community bodies.

As to the substantive changes, the EDPS recommends:

- including specific conditions and limitations in the text of the decision with respect to information and intelligence coming from private parties, inter alia in order to ensure the accuracy of this information since these are personal data that have been collected for commercial purposes in a commercial environment;
- ensuring that processing of personal data whose relevance have not yet been assessed is strictly limited to the purpose of assessing its relevance. These data should be stored in separate databases until the relevance to a specific task of Europol is established, for no longer than 6 months;
- as to interoperability with other processing systems outside of Europol, applying strict conditions and guarantees, when the interlinking with another database is actually put in place;
- including safeguards for the access to the data of persons who have not (yet) committed a crime. The safeguards given under the Europol Convention should not be weakened;
- ensuring that the need for continued storage of personal data relating to individuals should be reviewed every year and the review documented;
- that computerised access and retrieval of data from other national and international information systems should be allowed only on a case by case basis, under strict conditions;
- as to the right of access: the reference to national law in Article 29(3) (providing that the request for access shall be fully dealt with by Europol within three months following its receipt by Europol in accordance with this Article and with the laws and procedures of the Member State in which the request is made) should be deleted and be replaced by harmonised rules on scope, substance and procedure preferably in the Council Framework Decision on the protection of personal data or, where necessary, in the Council Decision. Article 29(4) (lists the grounds for refusal of access to personal data, in case the data subject wants to exercise his right of access to personal data concerning him) should be reworded and only allow refusal of access if such refusal is necessary. The consultation mechanism laid down in Article 29(5) (this mechanism makes the access conditional upon consultation of all competent authorities concerned and, with regard to analysis files, also upon consensus of Europol and all Member States participating in the analysis or directly concerned) shall be deleted as it overturns the fundamental nature of the right of access. Access should be granted as a general principle and may be restricted only under specific circumstances. Instead, according to the text of the proposal, access would be granted only after consultation is carried out and consensus is reached.

The present Council Decision should not be adopted before the adoption by Council of a framework on data protection, guaranteeing an appropriate level of data protection in conformity with the conclusions of the EDPS in his two opinions on the Commission [proposal for a Council Framework Decision](#).

Lastly, the EDPS also considers that it is necessary to ensure the application of [Regulation \(EC\) No 45/2001](#).

2006/0310(CNS) - 23/05/2007 Document attached to the procedure

The Commission has published a working document on the financial and staff implications of the proposal for a Council Decision on Europol.

In this document, the Commission recalls that Europol would be an EU agency and financed by the EU Budgets and that its staff would be covered by the EU Staff Regulations and Protocol on Privileges and Immunities.

In this context, the Commission services have defined the financial implications of the establishment of Europol as a Community agency for the Union's budget, as well as the rules applicable to Europol staff once the decision enters into force.

As far as financial implications are concerned, the proposal for a decision provided for an initial allocation of 82 million EUR from 2010 (see attached financial statement). This amount was however purely indicative and corresponded to a budgetary increase of 6% per year effective as of 2007 on the basis of expenditures on actual human resources. The allocation was also calculated on the basis that the staff would grow gradually to reach a total of 469 persons with an approximate cost of 117 000 EUR/year per person.

The consequences of Europol staff becoming statutory Community staff would be:

- 1) Europol staff would have to comply with the financial regulations applicable to Community agencies (Regulation (EC) 2343/2002);
- 2) The financial implications will be different to those that currently apply to Europol staff.

In this context and with a view to facilitating the progress of this file, the Presidency asked the Commission to undertake a comparison of

average expenditures relating to Europol staff under the rules currently applicable to Europol and under the rules relating to statutory Community officials.

From this analysis, it can be seen that the annual average cost of a statutory Europol agent would be around 96 000 EUR (without new recruitment expenses or training) and that the actual average annual cost of a member of Europol staff would be around 98 000 EUR.

2006/0310(CNS) - 12/06/2007 Resolution/conclusions adopted by Council

The Council reached an agreement on Chapter 1 ("Establishment and tasks") of a proposal for a Council Decision establishing Europol. It also adopted conclusions on replacing the Europol Convention by a Council Decision. This will constitute a clear improvement of the operational and administrative functioning of Europol. At that meeting, the Council also decided that a full assessment of the implications of financing Europol from the general budget of the EU and the application of the Protocol on the Privileges and Immunities of the European Communities should be made, guided by the principle of budget neutrality and taking into account the specific requirements resulting from Europol's mandate and tasks.

The Council agrees to the following:

- the Europol Convention will be replaced with a Council Decision pursuant to Article 34(2)(c) of the TEU and the necessary Council Decision will be finalised by 30 June 2008, at the latest.

- in accordance with Art. 41(3) TEU and other applicable provisions, Europol will be funded from the Community budget as from 1 January 2010, provided that satisfactory solutions on the following aspects have been found:

- the lifting of immunity for Europol officials when participating in operational activities, especially Joint Investigation Teams;
- the principle of staff rotation and the possibility for Europol staff participating in JIT to receive instructions from the team leader;
- clarification of the budgetary consequences, guided by budget neutrality.

- Europol and the Commission will ensure that all preparatory work is carried out in order to enable the introduction of Community financing as from 1 January 2010. To this end, Europol and the Commission will draw up an implementation plan (roadmap) which sets out the milestones which have to be reached before that date. The Council will endorse the implementation plan (roadmap) as soon as possible and, at the latest, in December 2007.

2006/0310(CNS) - 12/11/2007 Vote in committee, 1st reading/single reading

The Committee on Civil Liberties, Justice and Home Affairs adopted the report by Agustin DÍAZ DE MERA GARCÍA CONSUEGRA (EPP-ED, ES.) amending, under the consultation procedure, the proposal for a Council decision establishing the European Police Office (EUROPOL).

The main amendments adopted by the committee are as follows:

EUROPOL's legal basis: new legal bases have been proposed to enable EUROPOL to become a European Union Agency. These are based on Article 185 of the Financial Regulation and on Point 47 of the Interinstitutional Agreement of 17 May 2006 on budgetary discipline and sound financial management.

Democratic scrutiny: EUROPOL shall be subject to democratic scrutiny by the Parliament. It is proposed to strengthen democratic scrutiny as regards the discharge of the budget, granting of financial and human resources, annual reports, etc. The Parliament should also be consulted on the appointment and the dismissal of EUROPOL's Director. The Chairman of the Management Board or the Director of Europol shall present Europol's priorities for the coming year before a joint committee comprising Members of the European Parliament and members of the national parliaments in order to guarantee a democratic debate with civil society and a better control over its activities.

Financing of EUROPOL: the financing of Europol is subject to an agreement by the budgetary authority as foreseen by the Interinstitutional Agreement.

Tasks and missions: Europol shall play a special role in the coordination of investigative actions into criminal activities committed using the Internet, in particular with respect to terrorism-related offences and the distribution of child pornography and other illegal material. It shall also have the possibility, in the field of these tasks, of leading a Joint Investigation Team under the same conditions as for the counterfeiting of the euro;

Access and processing of certain data: the committee has included the following specifications as regards this issue:

- data of people in respect of whom there are serious grounds under national law for believing that they will commit criminal offences for which Europol is competent can not be treated as convicted criminals. Specific safeguards should be provided for this category of people. Direct access by the national units to the information system in respect of these persons shall be restricted solely to the identity details. If needed for a specific enquiry, the full range of data shall be accessible to the units via the liaison officers;
- special categories of data concerning racial or ethnic origin, political opinions, religious or philosophical beliefs, party or trade union membership, sexual orientation or health shall not be processed, save when absolutely necessary and proportionate for the purpose of a specific case and subject to specific safeguards;
- in so far as Europol is entitled to gain computerised access to data from other information systems, either of a national or an international nature, Europol may retrieve personal data by such means if this is necessary for the performance of its tasks only on a case-by-case basis if and in so far as this is necessary for and proportionate to the performance of its tasks and under strict conditions laid down by Europol after consultation of the European Data-Protection Supervisor and the Joint Supervisory Body.

Access to personal data shall be denied only if such refusal is necessary to: i) enable Europol to fulfil its activities properly; ii) guarantee that any national investigation which Europol is assisting will not be jeopardised; iii) protect the rights and freedoms of third parties.

Protection of data:

- the collection and exchange of data emanating from private parties (other than the Member States themselves), shall be lawfully collected and processed before being forwarded to Europol in accordance with national legislation. Access by Europol shall be allowed only on a case-by-case basis, for specified purposes and under judicial control in the Member States. Additional safeguards shall be laid down by Europol after consultation of the European Data-Protection Supervisor and the Joint Supervisory Body;
- Europol shall appoint an independent Data Protection Officer who should be responsible for ensuring, in an independent manner, lawfulness of data processing and compliance with the provisions of this Decision concerning the processing of personal data, including the processing of personal data on Europol staff which is protected by Regulation (EC) No 45/2001. In carrying out his tasks, the data-protection officer should cooperate with the data-protection officers appointed under Community law.

Storage of data: the committee believes that the period according to which the storage of data shall be reviewed is too long. The data should also be subject to a regular review. 2 years (and not 3 years), therefore, seems a more proportionate interval between data reviews.

Cooperation with third countries and other bodies: Europol's possibilities for co-operating with third countries and bodies should be rationalised in order to ensure consistency with the general policy of the Union in this respect, and to guarantee that third countries and bodies provide for an adequate level of protection of personal data, through new provisions on how such co-operation is to take place in the future to be adopted by the Council, after consulting the European Parliament.

2006/0310(CNS) - 06/12/2007 Debate in Council

The Council reached a general approach on Chapters VI ("Organisation"), VII ("Confidentiality Issues") and IX ("Miscellaneous Provisions") of a draft Council Decision establishing the European Police Office.

The Council already reached a general approach on Chapter I ("Establishment and Tasks") at its meeting in June 2007, as well as on Chapter II ("Information Processing Systems") and Chapter III ("Common Provisions on Information Processing") at its meeting in November 2007.

The Council Decision is expected to be finalised at the latest by June 2008.

2006/0310(CNS) - 17/01/2008 Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted a legislative resolution based on the report drafted by Agustin DÍAZ DE MERA GARCÍA CONSUEGRA (EPP-ED, ES,) amending, under the consultation procedure, the proposal for a Council decision establishing the European Police Office (EUROPOL). The resolution was adopted by 502 votes for 46 against and 41 abstentions. Parliament called on the Council to consult Parliament again within the framework of the Treaty of Lisbon if the Council decision establishing Europol is not adopted by June 2008.

The main amendments are as follows:

-Parliament has added that Europol is an agency within the meaning of Article 185 of the Financial Regulation and Point 47 of the Interinstitutional Agreement (IIA).

Democratic scrutiny: EUROPOL shall be subject to democratic scrutiny by the Parliament. It is proposed to strengthen democratic scrutiny through the involvement of the European Parliament in the adoption of the budget, including the establishment plan, and in the discharge procedure, granting of financial and human resources, annual reports, etc. The Parliament should also be consulted on the appointment of EUROPOL's Director. The Chairman of the Management Board or the Director of Europol shall present Europol's priorities for the coming year before a joint committee comprising Members of the European Parliament and members of national parliaments in order to guarantee a democratic debate with civil society and a better control over its activities.

Financing of EUROPOL: the financing of Europol is subject to an agreement by the budgetary authority as foreseen by the Interinstitutional Agreement. Parliament added that under no circumstances shall the Community subsidy for Europol, as established by this Decision, be used to meet expenditure relating to commitments made by Europol in accordance with the Europol Convention, before the entry into force of this Decision.

Access and processing of certain data: Parliament has included the following specifications as regards this issue:

-direct access by the national units to the information system in respect of the persons referred to in Article 12(1)(b) (i.e persons who there are factual indications or serious grounds under national law to believe will commit criminal offences in respect of which Europol is competent) shall be restricted solely to the identity details listed in Article 12(2). If needed for a specific enquiry, the full range of data shall be accessible to the units via the liaison officers;

-special categories of data concerning racial or ethnic origin, political opinions, religious or philosophical beliefs, party or trade union membership, sexual orientation or health shall not be processed, save when absolutely necessary and proportionate for the purpose of a specific case and subject to specific safeguards;

-in so far as Europol is entitled to gain computerised access to data from other information systems, either of a national or an international nature, Europol may retrieve personal data by such means if this is necessary for the performance of its tasks only on a case-by-case basis if and in so far as this is necessary for and proportionate to the performance of its tasks and under strict conditions laid down by Europol after consultation of the European Data-Protection Supervisor and the Joint Supervisory Body.

-where personal data are forwarded by Community institutions or bodies, Europol shall be regarded as a Community body within the meaning of Article 7 of Regulation (EC) No 45/2001.

Access to personal data shall be denied only if such refusal is necessary to: i) enable Europol to fulfil its activities properly; ii) guarantee that any national investigation which Europol is assisting will not be jeopardised; iii) protect the rights and freedoms of third parties.

-where Europol transmits data to third bodies, the Director of Europol shall in all circumstances consider the level of respect for human rights, democracy and the rule of law in the third country to which the data could be transferred, the purposes for which the data could be used and the data-protection level applicable to the body in question with a view to balancing this data-protection level with those interests, as well as

reciprocity in the exchange of information, and shall regularly inform the European Parliament, the Council and the Commission, as well as the data protection supervisory bodies, of the decisions taken in implementing this Article.

-as a general principle, exercise of the right of access shall not be denied. Exceptions to that rule may only be accepted if necessary in order to protect another fundamental right.

-if one or more Member States or Europol have objections to an individual obtaining access to data concerning him, Europol shall notify the person concerned that it has carried out the checks, without giving any information which might reveal to him whether or not personal data concerning him are processed by Europol. Parliament added to this that the data controller shall be obliged to state the reasons for a refusal of access, in such a way that the application of the exception may be effectively controlled in conformity with Recommendation No R (87) 15 of the Committee of Ministers of the Council of Europe of 17 September 1987 regulating the use of personal data in the police sector.

Protection of data:

-when the information emanates from private parties, it shall be lawfully collected and processed before being forwarded to Europol in accordance with national legislation implementing Directive 95/46/EC on the protection of individuals with regard to the processing of personal data. Access by Europol shall be allowed only on a case-by-case basis, for specified purposes and under judicial control in the Member States. Additional safeguards shall be laid down by Europol after consultation of the European Data Protection Supervisor and the Joint Supervisory Body;

-Europol shall appoint an independent Data Protection Officer. In carrying out his tasks, the data protection officer should cooperate with the data protection officers appointed under Community law.

Storage of data: Parliament believes that the period according to which the storage of data shall be reviewed is too long. It provides that the need for continued storage shall be reviewed and documented at least every two years (rather than three years) after the input of data.

Interconnection: interconnection shall be authorised following a decision to that effect by the Council, which shall be taken after consultation with the Europol officer responsible for data protection and with the Joint Supervisory Body and shall lay down the rules and conditions, in particular as regards the need to apply interconnection and the purposes for which the personal data are to be used.

National units: the national unit shall receive from Europol any information exchanged in the course of direct contacts between Europol and designated competent authorities. Relationships between the national unit and the competent authorities shall be governed by national law and, in particular, the applicable national constitutional requirements.

Appointment of director: Parliament made some amendments to these provisions and stated that Europol shall be headed by a Director appointed by the Management Board in accordance with a cooperation (concertation) procedure, which involves the European Parliament. The procedure is set out in the text. The Director's term of office shall be four years.

Lastly, Parliament stipulated that the Decision will be revised within a period of six months following the date of entry into force of the Treaty of Lisbon.

2006/0310(CNS) - 28/02/2008 Debate in Council

The Council reached an agreement on some of the outstanding issues regarding a proposal for a Council Decision establishing the European Police Office (Europol):

- the lifting of immunity for Europol officials when participating in operational activities, especially Joint Investigation Teams (JITs), and;
- the principle of staff rotation and the possibility for Europol staff participating in a JIT to receive instructions from the team leader.

Regarding the budget neutrality of the proposal, the Commission announced that it will submit supplementary information to the Council. This issue will be discussed by Coreper in March 2008 with a view to lifting the outstanding reservations.

The Slovenian Presidency announced that it would aim at reaching a political agreement on the draft Council Decision at the JHA Council to be held in April 2008.

It should be noted that the Commission submitted its proposal in December 2006. Since then, the Council has examined it chapter by chapter, with a view to reaching an agreement under the current (Slovenian) Presidency.

Once adopted, this decision will replace the Europol Convention. Europol will then become a Community agency, financed by the Community budget. The JHA Council considers that this change of status will constitute a clear improvement in the operational and administrative functioning of Europol.

2006/0310(CNS) - 06/04/2009 Final act

PURPOSE: to establish the European Police Office (Europol) as a Community Agency by altering its legal basis from a ?Convention? to a ?Council Decision?.

LEGISLATIVE ACT: Council Decision 2009/371/JHA establishing the European Police Office (Europol).

BACKGROUND: the European Police Office (Europol) was created in 1995, on the basis of a Convention between Member States. Europol was the first organisation set up under the provisions of the Treaty on European Union. At that time, European co-operation on justice and home affairs was strictly limited. Since then, a significant *acquis* has been adopted in this area, including instruments establishing other bodies set up by virtue of Council Decisions such as Eurojust and CEPOL (the European Police College).

Since then, three different Protocols have been adopted to amend the Europol Convention (in 2000, 2002 and 2003). The first two entered into force on 29 March 2007 and the third on 18 April 2007. The first Protocol extends Europol's mandate to money laundering whereas the other two strengthen Europol's powers regarding its support activities to Member States by enabling it to: (i) coordinate joint investigation teams ; (ii)

request Member States to conduct or coordinate investigations ; (iii) allow third countries (with which Europol has concluded operational agreements) to participate in analysis groups, etc.

However, faced with the need for a legal instrument that is easier to adopt than a convention, the Council decided to amend the legal basis of Europol so as to establish it as a Community Agency and to finance it through the Community budget.

CONTENT: the purpose of this Decision is to replace the current 1995 Convention by a Council Decision. This fundamental change transforms Europol into a European Agency, which results in the following advantages:

- Europol would be financed by the Community budget;
- the role of the European Parliament would be enhanced, notably in terms of democratic and budgetary oversight;
- the Staff Regulations of the European Communities would apply to Europol staff;
- Europol would be on a par with other bodies and agencies created subsequently, such as CEPOL and Eurojust.

The Decision also incorporates all successive protocols amending the basic Convention.

New competences and tasks of Europol: the Decision extends Europol's mandate to cover all forms of serious cross-border crime, as defined in Annex I. The new list of offences regarded as serious crime includes the forms of organised crime and terrorism, but also adds others, such as murder, organised robbery or crime connected with nuclear and radioactive substances.

Tasks: as regards its tasks, EUROPOL will be able to provide support (not operational, but more in terms of analysis) to Member States in connection with the organisation of international events with a public order policing impact. It will henceforth be able to receive information from private bodies for use in the framework of its traditional activities. Therefore, Europol may:

1. collect, store, process, analyse and exchange information and intelligence;
2. notify the competent authorities of the Member States of information concerning them and of any connections identified between criminal offences;
3. aid investigations in the Member States, in particular by forwarding all relevant information to the national units;
4. ask the competent authorities of the Member States concerned to initiate, conduct or coordinate investigations and to suggest the setting up of joint investigation teams in specific cases;
5. provide intelligence and analytical support to Member States in connection with major international events;
6. prepare threat assessments, strategic analyses and general situation reports relating to its objective, including organised crime threat assessments.

Europol may also complete field, strategic intelligence and training missions.

Participation in joint investigation teams: Europol staff may participate in supporting capacity in joint investigation teams, including such teams set up in accordance with [Council Framework Decision 2002/465/JHA](#) on joint investigation teams or other relevant texts, in so far as those teams are investigating criminal offences in respect of which Europol is competent. The administrative implementation of participation by Europol staff in a joint investigation team shall be laid down in an arrangement between the Director and the competent authorities of the Member States participating in the joint investigation team. During the operations of a joint investigation team, Europol staff shall be subject to the national law of the Member State of operation.

The Decision contains other provisions, including provisions on:

- requests by Europol for the initiation of criminal investigations;
- the tasks and missions of Europol national units and liaison officers (national liaison bureaux at Europol). In particular, the Decision clarifies that national unit shall be the only liaison body between Europol and the competent authorities of the Member States. It shall at the same time receive from Europol any relevant information and supply Europol, on their own initiative, with the necessary information as part of the investigations carried out by Europol.

Information processing: new tools and common provisions: new systems for processing personal data can be added to the main systems already established and used by the European Police Office (notably the information system and analysis work files). For these new tools, the Council, after consulting the European Parliament, would determine the conditions on data access, usage and storage.

Europol must make every effort to ensure that its data-processing systems are interoperable with those in the Member States and especially with those in use by the EU-related bodies with which Europol may establish relations.

As regards access to the data contained in the information system already in place - EIS - the national units may obtain full and direct access to all the information available in the system.

As regards analysis work files (comprising data related to offences within its competence), Europol would be required to delete them after a period of three years unless, at the end of this period, it considered the continuation of a given file to be strictly necessary. In this case, files could be continued for new periods of three years. As in the Europol Convention, these files are opened for the purposes of analysis, defined as the assembly, processing or utilisation of data with the aim of helping a criminal investigation.

Time limits for the storage and deletion of data: Europol shall hold data in data files only for as long as is necessary for the performance of its tasks. The need for continued storage shall be reviewed no later than three years after the input of data. A new provision states that the review shall be carried out by the inputting unit (in the case of data stored in the Europol Information System) or by Europol (for other Europol data files).

The control mechanisms to verify the legality of retrievals from the automated data files used to process personal data are also to be strengthened by increasing the audit data storage period from six to eighteen months.

Data protection and data security: as regards the collection, processing and utilisation of personal data, this proposal will take account of the [Council Framework Decision](#) on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters.

A new post of Data Protection Officer will be created, with independent duties and free access to all the data held by Europol and to all its premises. The Officer will have the task of ensuring compliance with the provisions, including the protection of all personal data processed by Europol.

Relations with Community organisations or those from third countries: in relation to arrangements to be concluded with Community organisations or with the competent bodies of third countries, Europol may, in so far as it is relevant to the performance of its tasks, establish and maintain cooperative relations with Eurojust, OLAF, Frontex, CEPOL, the ECB and the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA). Europol may also cooperate with third countries or international organisations such as Interpol. If Europol cooperates with third countries, specific provisions shall be applied in terms of the transmission of data. In principle, if the data concerned were transmitted to Europol by a Member State, Europol shall transmit them to the relevant entities only with that Member State's consent. If the data were not transmitted by a Member State, Europol shall satisfy itself that transmission of those data is not liable to jeopardise the security or public order of a Member State. Lastly, Europol may process personal data coming from private parties provided that a number of conditions are fulfilled, as set out in the Decision.

Europol administration and bodies: the European Police Office is and will continue to be headed by a director, appointed by the Council, acting by a qualified majority, for a four-year period that is extendable once. The director will be assisted in his or her tasks, and in particular performance of the tasks assigned to Europol, day-to-day administration, implementing the budget, legal representation of Europol, etc., by three deputy directors whose term of office extends over the same period. The administrative structure of Europol, related to that of other Community agencies of the same type, shall be composed of a Management Board (one representative per Member State) and members of the Commission.

With the transformation of the Office into a European agency, the staff will become staff of the European Communities.

Budget provisions: from 1 January 2010, Europol, as an entity of the Union, shall be funded from the general budget of the European Union and its budget shall be scrutinised by the European Parliament, in accordance with the discharge procedure.

ENTRY INTO FORCE: 4 June 2009.

APPLICATION: in principle, the Decision shall apply as of 1 January 2010. The Europol Convention and amending protocols shall be repealed as of that date.