EUROPOL: establishing the European Police Office

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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.