

II

(Preparatory Acts pursuant to Title VI of the Treaty on European Union)

Initiative of the Kingdom of Denmark with a view to adopting a Council Act drawing up, on the basis of Article 43(1) of the Convention on the Establishment of a European Police Office (Europol Convention), of a Protocol amending that Convention

(2002/C 172/05)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Convention on the Establishment of a European Police Office ⁽¹⁾, and in particular Article 43(1) thereof,

Having regard to the initiative of the Kingdom of Denmark ⁽²⁾,

Having regard to the opinion of the European Parliament ⁽³⁾,

Having regard to the opinion of the Management Board of Europol ⁽⁴⁾,

Whereas:

- (1) Pursuant to Article 30(2) of the Treaty on European Union, within a period of five years of the entry into force of the Treaty of Amsterdam on 1 May 1999, the Council is to promote cooperation in a number of different areas, *inter alia* through Europol.
- (2) The Tampere European Council in October 1999 stated that Europol has a key role with respect to cooperation between Member States' authorities in the field of cross-border crime investigation in supporting Union-wide crime prevention, analyses and investigation. The European Council called on the Council to provide Europol with the necessary support,

HAS DECIDED to draw up the attached Protocol amending the Convention on the Establishment of a European Police Office, signed today, by the representatives of the governments of the EU Member States, and

RECOMMENDS that Member States adopt this Protocol in accordance with their respective constitutional requirements.

Done at . . .

For the Council

The President

. . .

⁽¹⁾ OJ C 316, 27.11.1995, p. 2.

⁽²⁾ OJ . . .

⁽³⁾ OJ . . .

⁽⁴⁾ OJ . . .

ANNEX

PROTOCOL

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

THE HIGH CONTRACTING PARTIES to this Protocol, Contracting Parties to the Convention on the Establishment of a European Police Office, Member States of the European Union,

REFERRING TO the act of the Council of the European Union of . . . ,

CONSIDERING THAT:

- (1) The Europol Convention needs to be amended in the light of the discussions within the Council.
- (2) Europol needs to be given the necessary support and means to function effectively as the focal point of European police cooperation.
- (3) The necessary changes need to be made to the Europol Convention so as to strengthen Europol's operational support function with respect to the national police authorities.
- (4) The European Council has stated that Europol has a key role with respect to cooperation between Member States' authorities in the field of cross-border crime investigation in supporting Union-wide crime prevention, analyses and investigation. The European Council has called on the Council to provide Europol with the necessary support,

HAVE AGREED UPON THE FOLLOWING PROVISIONS:

Article 1

The Europol Convention is hereby amended as follows:

1. Article 2 shall be replaced by the following:

'Article 2

Objective

1. The objective of Europol shall be, within the framework of cooperation between the Member States pursuant to Article 29 of the Treaty on European Union, to improve, by means of the measures referred to in this Convention, the effectiveness and cooperation of the competent authorities in the Member States in preventing and combating serious international crime when two or more Member States are affected in such a way as to require a common approach by the Member States owing to the scale, significance and consequences of the offences concerned.

2. Europol's competence as regards a form of crime or specific manifestations thereof shall cover both:

1. illegal money-laundering activities in connection with these forms of crime or specific manifestations thereof;
2. related criminal offences.

The following shall be regarded as related and shall be taken into account in accordance with the procedures set out in Articles 8 and 10:

- criminal offences committed in order to procure the means for perpetrating acts within the sphere of competence of Europol,
- criminal offences committed in order to facilitate or carry out acts within the sphere of competence of Europol,
- criminal offences committed to ensure the impunity of acts within the sphere of competence of Europol.

3. For the purposes of this Convention, "competent authorities" means all public bodies existing in the Member States, which are responsible under national law for preventing and combating criminal offences.
 4. Whether a form of crime is to be considered serious international crime as referred to in this Article shall be assessed by the competent national authorities in accordance with the national law of the Member State to which they belong.'
2. Article 3 shall be amended as follows:
 - (a) Paragraph 1, point 4, shall be replaced by the following:

'4. to aid investigations in the Member States by forwarding all relevant information to the national units or provide analytical support to such investigations in accordance with the national law of the Member State requesting such support and under the sole responsibility of that Member State.'
 - (b) The following paragraph shall be added:

'4. Without prejudice to the International Convention for the Suppression of Counterfeiting Currency, signed at Geneva on 20 April 1929 and its protocol, Europol shall also act as a European contact point for the suppression of counterfeit euro currency.'
 3. Article 4 shall be amended as follows:
 - (a) Paragraph 2, first sentence shall be deleted.
 - (b) The following paragraph shall be inserted:

'4(a) Other competent authorities may also perform the tasks set out in paragraph 4 with the exception of points 4 and 6.'
 - (c) Paragraph 7 shall be replaced by the following:

'7. The Heads of national units shall meet on a regular basis to assist Europol, at their own motion or on request, by giving advice.'
 4. In Article 6 the following paragraph shall be added:

'3. Subject to conditions determined by the Management Board, after consultation of the Joint Supervisory Body, Europol may also process other data as background information for the execution of its tasks in accordance with the principles referred to in Article 14, provided that this information is not used or transmitted other than in accordance with the provisions on the computerised system of collected information referred to in paragraph 1.'
 5. Article 8 shall be amended as follows:
 - (a) In paragraph 1 the word 'Article 2(3)' shall be replaced by 'Article 2(2)'.
(b) In paragraph 4 the word 'Article 2(3)' shall be replaced by 'Article 2(2)'.
 6. Article 9 shall be amended as follows:
 - (a) In paragraph 1 the first sentence shall be replaced by the following:

'National units, liaison officers, and the Director, Deputy Directors or duly empowered Europol officials shall have the right to input data directly into the information system and retrieve it therefrom.'

(b) The following paragraph shall be added:

'4. Competent authorities may also query the Europol Information System. However, the result of the query will only indicate whether the requested data is available in the Europol Information System. Further information may then be obtained via the Europol National Unit.'

7. Article 10 shall be amended as follows:

(a) In paragraph 1 the introductory part shall be replaced by the following:

'1. Where this is necessary to achieve the objective laid down in Article 2(1), Europol, in addition to data of a non-personal nature, may store, modify, and utilise in other files data on criminal offences for which Europol is competent, including data on the related criminal offences provided for in the second subparagraph of Article 2(2) which are intended for specific analyses, and concerning:'

(b) Paragraph 2, point 1 shall be replaced by the following:

'1. analysts and other Europol officials designated by the European Directorate;'

(c) After paragraph 2, point 2, the following subparagraph shall be added:

'Only analysts shall be authorised to enter data into the file concerned and modify such data; all participants may retrieve data from the file.'

(d) Paragraph 5 shall be replaced by the following:

'5. In so far as Europol is entitled under other legal instruments to gain computerised access to data from other information systems, Europol may retrieve personal data by such means if this is necessary for the performance of its tasks pursuant to Article 3(1), point 2. The applicable provisions shall govern the use of this data by Europol.'

(e) In paragraph 8 the second sentence shall be replaced by the following:

'Any dissemination or operational use of data communicated shall be decided on by that Member State.'

(f) The following paragraph shall be added:

'9. Representatives of third States or bodies with which Europol has an agreement and where they are directly concerned by the analysis work in progress, and their participation is also in the interest of the Member States, may be invited by the analysis group to participate in the analysis work as observers. The supply of information from analysis files to such representatives shall take place in accordance with the applicable cooperation agreement. Any dissemination or operational use of information supplied by such representatives for inclusion in the work file may only take place with their permission.'

8. Article 12 shall be amended as follows:

(a) In paragraph 1, first subparagraph, the introductory part shall be replaced by the following:

'1. For every computerised data file containing personal data operated by Europol for the purpose of performing its tasks referred to in Article 10, Europol shall specify in an order opening the file:'

(b) In paragraph 1, the second subparagraph shall be replaced by the following:

'The joint supervisory body provided for in Article 24 shall immediately be advised by the Director of Europol of the order opening the file and shall receive the dossier so that it may address any comments it deems necessary to the Management Board within two months of receipt of the dossier. The dossier shall also be forwarded to the Management Board.'

(c) Paragraph 2 shall be replaced by the following:

'2. After the receipt of the opinion of the joint supervisory body or the lapse of the two-month period stipulated in paragraph 1, the Management Board may within two months instruct the Director to amend the opening order or close the file. Any such amendment or closure will only have effect as of the date of the relevant decision by the Director.'

9. Article 16 shall be replaced by the following:

'Article 16

Provisions on the drawing-up of reports

Europol shall ensure that mechanisms are put in place to enable effective control of the legality of retrievals from the computerised system of collected information referred to in Article 6. The data thus collected shall only be used for this purpose by Europol and the supervisory bodies referred to in Articles 23 and 24 and shall be deleted after six months, unless the data is further required for ongoing control. The details shall be decided upon by the Management Board following consultation with the joint supervisory body.'

10. Article 17 shall be amended as follows:

In paragraph 2 the word 'Article 2(4)' shall be replaced by 'Article 2(3)'.

11. Article 18 shall be amended as follows:

(a) Paragraph 1, point 3, is replaced by the following points:

- '3. this is permissible under the general rules within the meaning of paragraph 2; such rules may provide for a deviation from point 2 in exceptional cases, or
4. in specific cases where the Member State which supplied the data to Europol explicitly authorises the communication.'

(b) Paragraph 4 shall be replaced by the following:

'4. If the data referred to have been communicated to Europol by a Member State, Europol may communicate them to third States and third bodies only with the Member State's consent. The Member State may give its prior consent, in general or other terms, to such communication. In those cases where an agreement is in force between Europol and the recipient State or body, which allows for the communication of the data, prior consent shall be presumed, unless indicated otherwise. Any consent given or presumed may be withdrawn at any time.

If the data have not been communicated by a Member State, Europol shall satisfy itself that communication of those data is not liable to:

1. obstruct the proper performance of the tasks falling within a Member State's sphere of competence;
2. jeopardise the security and public order of a Member State or otherwise prejudice its general welfare.'

12. In Article 21, paragraph 3 shall be replaced by the following:

'3. Storage of personal data relating to individuals as referred to in Article 10(1) may not exceed a total of five years. Each time limit shall begin to run afresh on the date on which an event leading to the storage of data relating to that individual occurs. The need for continued storage shall be reviewed every three years and the review documented.'

13. In Article 22 the following paragraph shall be added:

'4. Unless otherwise provided in this Article the principles laid down in this title in respect to information processing shall apply to data in paper files.'

14. In Article 24(6) the words 'In accordance with the procedure laid down in Title VI of the Treaty on European Union, these shall be forwarded to the Council;' shall be replaced by the following:

'These reports shall be forwarded to the Council and the European Parliament;'

15. Article 28 is amended as follows:

(a) Paragraph 1 shall be replaced by the following:

'1. Europol shall have a Management Board. The Management Board:

1. shall decide unanimously on the limits for Europol with regard to Europol's assistance to Member States as referred to in Article 3(3) (Article 3);
2. shall define unanimously liaison officers' rights and obligations towards Europol (Article 5);
3. shall decide unanimously on the number of liaison officers the Member States may send to Europol (Article 5);
4. shall decide unanimously on Europol's processing of data as referred to in Article 6(3) (Article 6);
5. shall prepare the implementing rules governing data files (Article 10);
6. shall take part in the adoption of rules governing Europol's relations with third States and third bodies within the meaning of Article 10(4) (Articles 10, 18 and 42);
7. shall unanimously decide on details concerning the design of the index system (Article 11);
8. shall decide by two-thirds majority to instruct the Director to amend an opening order of data files or close the files as referred to in Article 12(2) (Article 12);
9. may deliver opinions on the comments and reports of the joint supervisory body (Article 24);
10. shall examine problems which the joint supervisory body brings to its attention (Article 24(5));
11. shall decide on the details of the procedure for checking the legal character of retrievals in the information system (Article 16);
12. shall take part in the appointment and dismissal of the Director and Deputy Directors (Article 29);
13. shall oversee the proper performance of the Director's duties (Articles 7 and 29);
14. shall take part in the adoption of staff regulations (Article 30);
15. shall take part in the preparation of agreements on confidentiality and the adoption of provisions on the protection of confidentiality (Articles 18 and 31);

16. shall draw up rules governing the appearance of the Director before the European Parliament and a committee as referred to in Article 34(2) (Article 34);
17. shall take part in the drawing up of the budget, including the establishment plan, the auditing and the discharge to be given to the Director (Articles 35 and 36);
18. shall adopt unanimously the five-year financing plan (Article 35);
19. shall appoint unanimously the financial controller and oversee the performance of his duties (Article 35);
20. shall take part in the adoption of the financial regulation (Article 35);
21. shall unanimously approve the conclusion of the headquarters agreement (Article 37);
22. shall adopt unanimously the rules for the security clearance of Europol officials;
23. shall act by a two-thirds majority in disputes between a Member State and Europol or between Member States concerning compensation paid under the liability for unauthorised or incorrect processing of data (Article 38);
24. shall take part in any amendment of this Convention (Article 43);
25. shall be responsible for any other tasks assigned to it by the Council particularly in provisions for the implementation of this Convention.'

(b) In paragraph 10 the second subparagraph shall be replaced by the following:

'These reports shall be submitted to the Council to take note and endorse. These reports shall also be sent to the European Parliament for information.'

16. The following Article shall be inserted:

'Article 32a

Right of access to Europol documents

Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, shall have a right of access to Europol documents in accordance with any principles and conditions determined by the European Parliament and the Council on the basis of Article 255 of the Treaty establishing the European Community.'

17. Article 33(2) shall be deleted.

18. Article 34 shall be replaced by the following:

'Article 34

Informing the European Parliament

1. The Council shall consult the European Parliament before adopting any measure referred to in Articles 10, 18, 24, 26, 28, 29, 30, 31, 40, 41 and 42, or should this Convention be amended in any way. The European Parliament shall deliver its opinion within a time limit, which the Council may lay down, which shall not be less than 3 months. In the absence of an opinion within that time limit, the Council may act.

2. The Presidency of the Council or its representative and the Director of Europol may appear before the European Parliament and before any joint committee, which may be set up by the European Parliament in cooperation with national parliaments with a view to discuss questions relating to Europol. The Management Board acting unanimously shall draw up rules governing the appearance of the Director of Europol before the European Parliament and a committee as mentioned in this paragraph. The Presidency of the Council or its representative and the Director of Europol shall, with respect to the European Parliament and national parliaments, take into account the obligations of discretion and confidentiality.

3. The obligations laid down in this Article shall be without prejudice to the rights of national parliaments and to the general principles applicable to relations with the European Parliament pursuant to Title VI of the Treaty on European Union.'

19. In Article 35(4) the following sentence shall be added:

'The five-year financial plan shall be forwarded to the Council and the European Parliament for information.'

20. In Article 39(4) the following words shall be added:

'or the Community instruments replacing the Brussels Convention.'

21. In Article 42 the following paragraph shall be added:

'3. Europol shall establish and maintain close cooperation with Eurojust, in so far as is relevant for the performance of the tasks of Europol and for achieving its objectives, taking into account the need to avoid duplication of effort. The essential elements of such cooperation shall be determined by an agreement to be established in accordance with this Convention and its implementing measures.'

22. In Article 43 paragraph 3 shall be deleted.

Article 2

1. This Protocol shall be adopted by the Member States in accordance with their respective constitutional requirements.

2. Member States shall notify the Secretary-General of the Council of the European Union of the completion of the constitutional procedures for the adoption of this Protocol.

3. This Protocol shall enter into force 90 days after the notification referred to in paragraph 2 by the State which was a member of the European Union at the time of adoption by the Council of the Act establishing this Protocol and was the last to complete the notification.

Article 3

If this Protocol enters into force in accordance with Article 2(3) prior to the entry into force of the Protocol 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⁽¹⁾, in accordance with Article 2(3) thereof, the latter protocol shall be deemed to have been repealed.

Article 4

1. This Protocol shall be open to accession by any State that becomes a member of the European Union if it has not already entered into force by the date of deposit of the instruments of accession to the Europol Convention pursuant to Article 46 of the Europol Convention.

⁽¹⁾ OJ C 358, 13.12.2000, p. 1.

2. The instruments of accession to the Protocol shall be deposited at the same time as the instruments of accession to the Europol Convention pursuant to Article 46 thereof.
3. The text of this Protocol in the language of the acceding State, drawn up by the Council of the European Union, shall be authentic.
4. If this Protocol has not already entered into force at the time of expiry of the period referred to in Article 46(4) of the Europol Convention, it shall enter into force with respect to any acceding State on the date on which the Protocol enters into force in accordance with Article 2(3).
5. If this Protocol enters into force pursuant to Article 2(3) prior to expiry of the period referred to in Article 46(4) of the Europol Convention, but after deposit of the instrument of accession referred to in paragraph 2, the acceding Member State shall accede to the Europol Convention as amended by this Protocol, in accordance with Article 46 of the Europol Convention.

Article 5

1. The Secretary-General of the Council of the European Union shall act as depositary of this Protocol.
 2. The depositary shall publish in the *Official Journal of the European Communities* information on adoptions and accessions and any other notification concerning this Protocol.
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