Public Hearing

on

The Future of Europol

Tuesday 10 April 2007

15:00 – 18:30

Meeting room PHS 5B001
(Paul Henri Spaak Building)

Brussels
THE FUTURE OF EUROPOL: FURTHER CHALLENGES AHEAD?

The Committee on Civil Liberties, Justice and Home Affairs (LIBE) is dealing with the new proposal for a Council decision establishing the European Police Office (EUROPOL) presented by the Commission in December 2006 (COM(2006)0817). This proposal provides for a more flexible legal basis for Europol which will avoid the long ratification process that each change to the current convention entails. In this respect it is noticeable that the three protocols amending the current Europol Convention, adopted in 2000, 2002 and 2003 will enter into force only in March/April 2007\(^1\).

This seminar aims to discuss the new above-mentioned Commission proposal, which will be adopted by the Council upon consultation of the European Parliament. Mr. Díaz de Mera (MEP) is the rapporteur on behalf of the LIBE committee\(^2\) on this proposal.

The rapporteur considers it important to have an overview on what are the substantive changes brought about by the new proposal since the new legal framework provides for the extension of the role and tasks of Europol on the one hand and for the gradual inclusion of Europol into the European institutional framework on the other. A closer look will be given to the Europol information system, the interoperability principle and the general framework for data protection in the third pillar of the EU Treaty.

The seminar shall enable the Commission and the Council Presidency to give their views, take into account reactions from the various stakeholders to the proposal and bring them to the attention of Members of the LIBE committee, and, at the same time, inform a wider audience about the current transformation of Europol into a body of the EU.

Moderator: Mr. Agustín Díaz de Mera García Consuegra, Member of the Committee on Civil Liberties, Justice and Home Affairs, Rapporteur.

15:00 - 15:30
OPENING SESSION

Introduction by

- **Mr Jean-Marie CAVADA**, Chairman of the EP Committee on Civil Liberties, Justice and Home Affairs
- **Mr Max-Peter RATZEL**, Director of Europol
- **Mr Michael NIEMEIER**, Chairman of the Europol Working Party, German Federal Ministry of the Interior

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\(^1\) OJ L 41 of 13.02.07, p. 21

\(^2\) Working document on the future of Europol (PE 384,579)
15:30 - 16:30
SESSION I

THE NEW LEGAL FRAMEWORK FOR EUROPOL
AND THE SUBSTANTIVE CHANGES

The new proposal for a Council decision establishing the European Police Office (EUROPOL)\(^3\) contains substantive changes which need to be analysed in detail:

- the extension of the Europol mandate (article 4-5 and Annex I of the proposal): the Europol mandate is now extended to cover criminality which is not strictly related to organised crime. Furthermore, the Europol database will include information and intelligence forwarded by private entities: are additional safeguards required in order to ensure the accuracy of information coming from private parties?

- the financing of Europol from the Community budget and the staff of Europol within the scope of the Community Staff Regulations: will this provide a real scrutiny power for the European Parliament?

15:30 - 15:45  Changing the Europol convention in a Council Decision of the EU

Mr Fabio MARINI, European Commission DG JLS, Deputy Head of Unit of D2 Fight against economic, financial and cyber crime

15:45 - 16:00  State of play in the Council

Ms Nathalie PENSAERT, Council of the European Union

16:00 - 16:15  The future of Europol and its limits: from intelligence based to action oriented

Prof Willy BRUGGEMAN, Benelux University Centre, President of the Belgian Federal Police board, former Senior Deputy Director of Europol

16:15 - 16:30  Discussion

\(^3\) Presented by the Commission in December 2006 COM(2006) 817
EUROPOL INFORMATION SYSTEM: HOW BEST TO IMPROVE IT WHILE GUARANTEEING FUNDAMENTAL RIGHTS

The processing of collected information by Europol will be more general since the new provision in the Commission proposal allows Europol to process information and intelligence insofar as it is necessary to achieve its objectives. The principle of interoperability with the data processing systems at national level and with the system in use by the Community and Union related bodies needs further thought as far as conditions and guarantees are concerned. Furthermore, is the right to access personal data truly guaranteed by the new proposal according to article 8(2) of the Charter of Fundamental Rights for the European Union, or are the exceptions under specific circumstances overturning the fundamental nature of the right of access?

16:30 - 16:40 Information, intelligence and interoperability: the principle of availability and the problem of biometricised security

Prof Juliet LODGE, Jean Monnet Centre, University of Leeds

16:40 - 16:50 The role of Europol in police cooperation: the French perspective

Mr Michel GAUDIN, French Chief Police

16:50 - 17:00 Discussion

THE APPLICABILITY OF A GENERAL FRAMEWORK ON DATA PROTECTION

Europol will become a body of the European Union, but not a Community institution or body. Therefore, Europol remains outside the scope of Regulation (EC) Nr. 45/2001 which provides for the protection of individuals as regards the processing of their personal data by Community institutions and bodies. Chapter V of the new proposal introduces a data protection regime sui generis which relies on an applicable

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4 Article 10, COM(2006)0817
5 Article 29, COM(2006)0817
6 Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the community institutions and bodies and on the free movement of such data, OJ L 8 of 12.01.2001
general framework for data protection. The need for a general legal framework on data protection in the third pillar is evident along with the necessity to guarantee a harmonised system when Europol is exchanging data with Communities institutions or bodies. Will the communication of data to third countries and international organisations be implemented assuring an adequate level of data protection? Is the Data Protection Officer within Europol really independent?

17:00 - 17:10  *The Council framework decision on the protection of personal data in the third pillar*

N.N., European Commission

17:10 - 17:25  *The general framework of the transfer of data towards third countries*

Prof. Paul DE HERT, University of Brussels, Faculty of Law and Criminology Department

17:25 - 17:45  *Europol framework for the transfer of data towards third countries*

Mr Pelopidas DONOS, Europol Data Protection Unit and
Mr Dietrich NEUMANN, Europol Legal Affairs Unit

17:45 - 18:10  *Discussion*

18:10 - 18:30  *Concluding remarks by*

- Michael NIEMEIER, Chairman of the Europol Working Party, German Federal Ministry of the Interior

- Max-Peter RATZEL, Director of Europol

- David SMITH, Europol Joint Supervisory Body

- Peter HUSTINX, European Data Protection Supervisor

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7 Article 26, COM(2006)0817: "...Europol shall apply the principles of the Council Framework Decision 2007/XX/JHA on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters in the collection, processing and usage of personal data....".

8 Discussions are still in place in the Council.
- **Michel GAUDIN**, French Chief Police
- **Giovanni DE GENNARO**, Italian Chief Police (to be confirmed)

### ANNEX

**PRACTICAL GUIDELINES FOR THE DEBATE**

Presentations will be limited to 10 - 15 minutes (see programme for details). During the discussion, so as to make it possible for the highest possible number of parliamentarians to intervene, speaking time will be limited to 2 minutes per contribution or question.

The floor will be given to Members in the order in which requests are received. Speakers wishing to supplement their speeches may do so in writing by submitting documents (preferably in English or French) in advance to the secretariat (email: ip-libe@europarl.europa.eu). These documents will be circulated during the meeting.

**IMPORTANT NOTICE FOR THOSE WISHING TO ATTEND THE HEARING**

This seminar is open to the public. However, for security reasons, participants who do not have a European Parliament access badge must obtain a pass in advance. Those wishing to obtain such a pass should contact the seminar secretariat (Mr. Ryszard DE GROOT) before **30 March 2007**. It is essential to provide us with your full name, address and date of birth. Without this information, the Security Service will not provide entry passes.

Simultaneous interpretation will be available in the following languages: EN, FR, DE, IT, NL, ES, HU, EL, PT, RO, SV, PL.

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**EUROPEAN PARLIAMENT**
Committee on Civil Liberties, Justice and Home Affairs

Public Hearing
On
The Future of Europol

Tuesday 10 April 2007

OPENING SESSION

In his opening speech, Mr Jean Marie CAVADA (Chairman of the European Parliament Committee on Civil Liberties, Justice and Home Affairs) highlighted how Europol is an organisation that works for and with the citizens - citizens need to know they will be protected from crime. Police cooperation is one of the most effective replies that the EU can offer in order to deal with criminals and people who commit fraud. Europol was one of the first organisations created in accordance with the terms of the Maastricht Treaty, in order to effectively manage the free movement of people.

A brief summary of the current situation followed; namely how the Council has moved to replace the Europol Convention with a Council Decision. The Seminar focused on the Council Decision, the information systems of Europol, and the principles of interoperability and cooperation.

Mr Max-Peter RATZEL (Director of Europol) began by stating Europol, as an organisation, has developed fast. Europol was established in the 1990s in order to tackle organised crime and terrorism, and has been an evolutionary development since then. In order to secure citizens, the organisation has to take changeable threats into account.

Europol has developed a reporting mechanism, termed the EU Terrorism Situation and Trend Report (TE-SAT 2007), which provides an overview of the phenomenon of terrorism in the EU from the law enforcement perspective. This approach provides a solid basis for decision-making both in the Member States and at the EU level, a tool that Europol is providing to help Member States in the fight against terrorism. In preparatory reports, Europol uses its own intelligence, but also information generated by other EU bodies (i.e. Eurojust). Europol would like to support the Member States in bringing about more horizontal organisational structures. Europol is at the service of the Member States, and the organisation strictly follows Council guidelines.

The three protocols of 2000, 2002, 2003 amending the Europol Convention were clarified. However, the ratification and implementation of the protocols has been a slow process.

Mr Michael NIEMEIER (Chairman of the Europol Working Party, from the German Federal Ministry of the Interior) began by underlining how the subject of Europol is close to the heart of the German Presidency, given the important role played by
Germany in 1999. The Council of Ministers last year provided for the mandate to change the Europol Convention to a Council Decision. It took a long time to ratify the protocols (too long to deal with new forms of crime). He welcomed the Commission's Draft calling for a new Council Decision.

The Commission's Draft has key elements to improve the work of Europol: to extend its mandate to other areas of cross-border crime, to enable Member States to deal more effectively with the pursuit of criminals. The Council Decision also enshrines Europol with a central role in the fight against the counterfeit of the Euro. The importance of strengthening the operational and administrative work also features as vital, and includes:

- involving national law enforcement authorities to a higher degree (to act as interface).
- extending the work of the management board (i.e. extending the period of work).

The importance of data protection was stressed, and the setting up of the joint supervisory board (JSB) lauded an excellent idea. Many of the suggestions of the JSB have been included into the Draft Council decision. There will, however, have to be more work done on the Commission Proposal on the issue of private entities. Data protection has to be dealt with in more depth than before, and there needs to be a well balanced approach agreed to in this area.

SESSION I
THE NEW LEGAL FRAMEWORK FOR EUROPOL AND THE SUBSTANTIVE CHANGE

Mr Fabio MARINI (European Commission DG JLS, Deputy Head of Unit of D2 Fight against economic, financial and cyber crime) dealt with the issue of changing the Europol Convention through a Council Decision, and explained how the German Presidency considered the file a priority. The collection, processing and dissemination of information have all been considered, along with fully incorporating Europol into the security structure of the Union. There is no doubt that a Council Decision should replace the Convention. The Commission proposal was built on the preparatory work of the Austrian and Finnish Presidencies.

While the general structure of the office remains unchanged, the financing framework and the rules applicable to staff have changed. The proposal aims to turn Europol into a Justice and Home Affairs agency, where the Member States can only derogate from the general provisions by unanimity (although there would have to be a transitional period before the new measures come into play). There have been some difficulties relating to the extension of the mandate to create new databases, and derogation from the original text was not welcomed by some of the Member States. The European Parliament should give its opinion by the 21st of June.

Ms Nathalie PENSAERT (Council of the European Union) briefly summarised the state of play in the Council, and started by underscoring the high priority of the file
for the German Presidency. The Working Party began by examining the proposal from article 1 onwards, and to date chapters 1 to 5 have been dealt with.

**Chapter 1:**
- The Working Party has had two in-depth examinations, and some revisions of the text have been suggested. The objectives and competences of Europol have been extended to serious crime, rather than only focusing on organised crime.

**Chapters 2 and 3:**
- First examination, no major amendments required, although some clarifications.

**Chapter 4:**
- Relations with other partners-two main issues:
  - Real operational need to simplify the exchange of information with other bodies (related to data protection rules in Europe).
  - The Commission Proposal states Europol can no longer make agreements with third parties independently.
- There have general reservation on agreeing changes due to the on-going negotiations on the Framework Decision on Data Protection.

To date, there has been no outcome relating to issues concerning financing and staff, however the maintenance of the rotation of roles is of major concern to the delegations.

**Prof Willy BRUGGEMAN** (Benelux University Centre, President of the Belgian Federal Police board, former Senior Deputy Director of Europol) dealt with the future of Europol and its limits from intelligence based to action based. He clarified he would use the platform to clarify his personal views, one of them being Europol's future role shall remain intelligence based. When redesigning the legal framework of Europol a modern approach should be adopted to consolidate and update the functioning of Europol. Any real future developments have not been included in the text.

- We must regret the lack of global vision in the EU and its institutions relating to Europol and related organisations.
- These organisations related with topics related to the securitisation of the EU are operating mainly by themselves. A harmonised standard concerning data protection and technical measures is missing, and therefore a possibility to harmonise should be provided for.
- The Commission Proposal is a good proposal- it is a good idea to extend the focus to serious crime, but the main focus should remain on organised crime. However, to focus on organised crime alone is a mistake, and the Member States must be strong enough to keep Europol priorities in place.

He continued by drawing attention to the hesitation of some Member States concerning the communitarisation of Europol budget. Regarding personnel, there are some options:
- continue with the current system (but it is a difficult system)
- copy the Commission statute as much as possible, and only derogate when necessary.
Member States are more flexible about bilateral police ties rather than involving the Europol staff. However, there should be more democratic control; more transparency through the democratic channels of the European Parliament and the national parliaments, and the text could be more courageous in that regard. He concluded by saying the changes have been modest.

Mr Augustín DÍAZ DE MERA (Rapporteur) said the establishment of Europol extended the abilities of police work in Europe. It has been a slow process, due to the ratification of the three protocols. However, it is vital to provide Europol with a legal framework so that different bodies in Europe can benefit. The Council Decision will provide the legal basis for this. Europol will become an agency of the Union, and the new regulation includes: the extension of Europol's remit to include serious crime; extending the joint operations of investigation teams, and the possibility of incorporating Europol within the activities and information of Member States and private entities. However, it is most urgent that democratic control is introduced with two facets: the dimensions of the European Parliament and the national parliaments. Many of the new aims in the Draft Decision need to be examined in great detail.

Comments/Questions for the panel included the following:

Mr Wolfgang KREISL-DÖRFLER (Member of the European Parliament) began by welcoming the hearing, and underlining its importance. Europol must develop from here, but in what direction is Europol bound? He addressed Mr RATZEL and started by reminding him of his high level working group visit to the US, which incorporated meetings with high level employees from the CIA and FBI. What was the legal basis for the previously mentioned close cooperation with the US? What if information is being passed on to third countries? What guarantees are there for data passed on in that manner?

Mr Claudio FAVA (Member of the European Parliament) questioned the Commission on the role of the European Parliament. There is a question of democratic accountability vis-à-vis the European Parliament and the Commission. Will the European Parliament be marginalised regarding discussions on Europol, and will Europol be marginalised more than other institutions? Mr RATZEL was asked why he declined an invite when the EP TDIP Committee was working on abuses that could have occurred in the fight against terrorism.

Ms Inger SEGELSTRÖM (Member of the European Parliament) referred to the growing phenomenon of human trafficking and to the role of the EU in this matter. Can we expect any changes in this regard?

Ms Kathalijne Maria BUITWNWEGE (Member of the European Parliament) asked how we can rely on EU institutions when some Member States negotiate bilaterally. How will Europol deal with these situations? How can we build trust? What is the working method to build trust?

Responses from the panel to comments/questions from the floor:
Mr RATZEL addressed the issues related to the building of mutual trust and understanding. In the past, a lot of information was shared on a "need to know" basis; this must develop into a "need to share principle". This must be done by the Member States as Europol has no coercive powers. At the European level, Europol has tried to avoid a duplication of efforts, or rivalry etc... The trafficking of people: it is a major obligation, but Europol has to rely on the information provided by the Member States. In relation to Mr FAVA'S question, he answered he declined because it does not come within the realm of Europol's mandate. To address the first question from the floor, he said that Europol delivers information to competent countries under the terms of the Europol Convention, and any information given to third parties must be based on agreements (very careful checks are undertaken before any information is shared). Within Europe, a lot of trust and understanding has been built over the past seven years. It must be a long term task.

Mr MARINI began by addressing the role of the European Parliament, and stated it plays an important role in the decision-making process. According to the current proposal, the European Parliament will have control over the annual budget.

Prof BRUGGEMAN believes that a higher level of interoperability is needed. Europol is developing at various levels, including the creation of liaison officers (under the control of national parliaments), in-house national funding of Europol (to support the call of the Member States' for greater involvement of the national parliaments), and the external representative capacity of Europol.

Parliamentary control should be designed in relation to Europol needs. Regarding the issue of trust, that can only come with contact. There should be national visions on European cooperation- only a few countries have a national vision on European cooperation. The police authorities are doing what they want.

Second round of comments/questions from the floor to the first panel:

Mrs Assya Velichkova MIHAYLOVA (Member of the National Assembly) supports the idea of establishing a joint committee of representatives from the national and European parliaments to take on some of the monitoring activities.

Mr Hubert PIRKER (Member of the European Parliament) believes that Europol has always been seen as the classical police instrument of the EU by the citizens, and there seems to be no image problem at all. While things can be improved, control and monitoring instruments are quite satisfactory, and possibly better than in other institutions. There should be a focus on how we can improve the working capacity of Europol in changing circumstances. How can the exchange of data be made more efficient? How can the situation vis-à-vis Eastern European countries be improved in the area of cross-border criminal behaviour?

Mr. Panayiotis DEMETRIOU (Member of the European Parliament) was happy to hear the good news of strengthening Europol, and asked Mr RATZEL when it comes to the cooperation of Europol with other organisations, have the results been positive.
Mr Alexander ALVARO asked how important it is to discuss the immunities of Europol. Does it extend to the liaison role? Are there official Europol documents that outline what Europol deems important for the organisation?

Responses from the panel to comments/questions from the floor:

Prof BRUGGEMAN questioned whether the activities of the liaison officers are controlled nationally. It depends on the attitudes of the national parliaments. And, if there is a lack of trust, how can it be resolved? There is more trust now than there was before due to best practices, decisions and initiatives at the national level and the European level.

Mr CAVADA intercepted, and asked what organisations Prof BRUGGEMAN would like to see better cooperation with? Prof BRUGGEMAN replied FRONTEX and OLAF.

Mr RATZEL began with the issue of trust; in 2006 Europol supported more than 60 ongoing investigations in the field of terrorism, in comparison to 40 investigations in the previous year. Therefore, trust is growing. Operational agreements are in place with Interpol and Eurojust, some improvement is needed with OLAF while the agreement with FRONTEX is currently being negotiated.

Regarding Mr ALVARO’S question, Mr RATZEL answered that while a lot of documents describe Europol strategies, it is a complicated exercise given the size and the internal structure of Europol. To answer Mr PIRKER’S question: Member States are generally happy with the support they receive from Europol, although there is a lot more that can be achieved.

SESSION II
EUROPOL INFORMATION SYSTEM: HOW BEST TO IMPROVE IT WHILE GUARANTEEING FUNDAMENTAL RIGHTS

Prof Juliet LODGE (Jean Monnet centre, University of Leeds) spoke about the Europol information system and the principle of availability. She welcomed the initiative and endorsed Prof BRUGGEMAN’S point of institutional accountability. How does interoperability work from a technical perspective and what has to be done in order to ensure proper political control? The whole issue of data exchange and interoperability is an important area in need of analysis. There is no possible way to separate data protection for personal security, terrorism or criminal activity investigations, from personal data individual citizens provide for other reasons. We place this within the context of realising the measures introduced by information society i2015.

There are a number of things in need of attention:

• the emphasis on subsidiarity is politically highly realistic;
• the need for bilateralism in creating trust and the need for bilateralism in developing automated information exchange between different police forces;
• difference in data bases (centralised /decentralised) and the management of data within these systems;
• the difference in creating interoperability and information exchange between data bases which are created for one purpose and mined and used for another.

There are a number of implications for the citizens on the principle of data availability and also the way in which data is defined including things such as the creation of new data which can be held on or exchanged. A number of issues have been overlooked in the proposal concerning, for example, outsourced data: what happens to it and who owns it? This needs specifying and defining in the context of this proposal. More attention must be paid to degradation issues concerning data, as a lack of system integrity could have a severe impact on the national police authorities and could result in difficulties for law enforcement agencies, negatively affecting their partnerships with Europol. The issue of the funding Europol also needs to be dealt with.

There are also concerns regarding information exchange and disclosure (such as discretionary disclosure) and the access that Europol will have or not to the information held. Another important issue concerns data administrators and processors; who is training them? Who is controlling that data, it is no longer European or state controlled data. Without disputing the fact there are technological capabilities which will increase speed and efficiency, the same technological advancements could also define the political agenda. Bureaucrats become more important in agenda-setting than politicians. This underlines a huge problem with the balance of power. It is important to realise that information is commoditized, and there needs to be a standardisation of common terms (especially in the area of biometrics). There are implications related to data outsourcing which exacerbate trust, and citizens are particularly worried about fraud. Any access by third parties (whether private organisations or third states) need to be reviewed in the light of i2015.

What the public sees is a growing surveillance society and increasing insider fraud. Identity and biometric theft is possible, and there are unbelievable claims made by politicians and purveyors of the technology; the inseparability of interoperability for security and interoperability for daily life needs to be revisited.

There are specific issues and dilemmas: the operational need for this technology is uncontested, but there could be unequal treatment of citizens depending on the Member State involved. Relating to the current proposal, there are particular problems with:
• terminology;
• financial burdens on interoperability and what that means for Europol's budgetary needs, and the way in which the European Parliament should control and monitor the activities;
• issues of secrecy and confidentiality need to be revisited;
• too many articles have imprecision and ambiguity, and a creeping securitisation of a whole range of issues that were previously domestic;
• weak or ambiguous timeframes;
• emphasis on best practice, but this is not a substitute for political accountability.
There are some very sensible measures put forward in the proposal for auditing what occurs, and there is also information on information retrieval. But there are problems associated with these related articles:
- there is a need for recognition that capacity building is required
- ethical uses of data.

To conclude, accountability is not just an audit trail: it needs closer inspection. Can biometrics deliver security? It is doubtful. There is a need for an EU model for e-governance on information exchange. The roles of the European and national parliaments must be extended and recognised in some form inside this proposal in order to address the mutual trust within the agencies and the trust vis-à-vis citizens.

Mr Michel GAUDIN (French Chief of Police) presented information from a French perspective on the role of Europol in police cooperation and drew attention to the centralised police system prevalent in France. He welcomed the idea of speed and the timing involved in parliamentary scrutiny; however, this does not address the needs of a national police force, but given that we are operating in a democratic system, representatives must know what the police forces do. In order to fight crime, action must be taken at the international level, and an exchange of data and systems leads to international effectiveness. However, there is also a need for scrutiny and control. Another issue concerns trust, and this is not just an international phenomenon. It is a matter of concern in any police force, and requires the luxury of time.

New imperatives present themselves when operating in an international environment, and while there are mechanisms in place (i.e. for diplomatic relations), they may not apply to police force operations. Given the Danish Protocol was agreed upon 2002-2003, it is not satisfactory that it is only being implemented now. Europe, however, should not make the same mistakes as France and establish too many bodies, as the process could become convoluted.

France has to build bridges with Europol and other bodies. Regarding organised crime, there have been some positive results in the fight against it in France. But France normally operates in an international environment. Five to six Member States benefited through cooperating with FRONTEX in child trafficking. But, there is a lot of work to be done in that area. Different institutions must look at how European systems operate in fighting gangs, organised crime etc.

Various measures were proposed, and include the following:
- it is imperative to differentiate between the work being done by Europol, and the JHA Council and other bodies;
- the Commission and the Council must give clear instructions;
- European Chiefs of Police have to implement these instructions. Would a Committee of Chiefs of Police streamline the processes?
- in France, there is a belief that Europol's management board is too occupied with administrative issues. It is important to know what the European scrutiny policy is with respect to Europol's mandate;
- clear instructions from the Council are required with respect to the role of the European Parliament;
• decisions taken at the JHA Council level must filter down to where they are needed and France advocates the removal of unnecessary filters;
• faster operational procedures are needed.

Last week, France dismantled a terrorist network of the Tamil Tigers thanks to assistance from Europol. On the other hand, there have been some disappointing developments, including the location of the Maritime Intelligence Centre which will be based in Portugal. This type of centre should link up with Europol. Another requirement is the formation and strengthening of exchanges with other countries, and Prüm will certainly add value in this realm.

SESSION III
THE APPLICABILITY OF A GENERAL FRAMEWORK ON DATA PROTECTION

Prof Paul DE HERT (University of Brussels, Faculty of Law and Criminology Department) stated that his topic concerning the transfer of data to third countries is only one aspect of the debate on the protection of personal data in the third pillar. This topic (the transfer of data to third countries) has existed for decades, and has occurred in Interpol, Europol Convention and on a bilateral basis. However, data protection was absent in older texts, and it must be asked whether judicial cooperation in criminal matters needs data protection. He wondered whether there are already sufficient checks and balances in place.

Assuming data protection is needed in police matters, one could ask what type of structure is preferential. Centralised versus decentralised. In the first pillar, there is a centralised approach, and the Commission has the last word in assessing the adequacy of third states. However, this does not exist in the third pillar, and there is no central supervision by an institution, and conditions relating to adequacy thus remain unclear.

In the absence of a European approach to such issues, Europol has invented its own measures (i.e. operational agreements allowing for the transfer of data), and this in turn makes Europol vulnerable and open to criticism. He also asked whether we are being too tough on Europol and not strict enough on the Member States. A vacuum in EU supervision procedures is too risky. Maybe the role of Europol should be strengthened regarding the transfer of data to third states, especially as the mandate is due to enlarge.

Mr Dietrich NEUMANN (Europol Legal Affairs Unit) provided insight on the Europol framework for the transfer of data with third countries, and presented the current legal framework Europol applies and the main elements relating to the Draft Council Decision.

The European Convention only allows the transmission of data to third countries when adequate data protection is guaranteed. There is however a legal gap, but it is

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9 Mr Giusto CATANIA (Vice-Chairman, Committee on Civil Liberties, Justice and Home Affairs replaced Mr CAVADA in the role of Chairman from 5p.m. onwards.
not specific to Europol's framework. The Council of Europe 108 Convention has gaps, as it only speaks of "adequate" protection. He continued by stating that Europol had to develop measures to assess what "adequate" data protection constitutes:

- the ratification of the Council of Europe 108 Convention (Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data) was seen as an indicator to assess whether a country had "adequate" protection;
- Europol sends a comprehensive data protection questionnaire to third countries;
- a team from Europol visits the third country in question, and analyses data protection in practice.

A report on the country is then submitted to the management board, and submitted to the data protection joint supervisory body. The Council has the final say. While the data protection report is a decisive element, the decision also lies with the other parties involved.

What does the Council Decision do?
- It changes the current regime. In future, the exchange of information will only be permitted if the EU has concluded an agreement with the third party;
- The exceptional clause remains.

In a comparison of the two systems, negotiations and finalisation will take more time than under the existing system.

Mr Pelopidas DONOS (Europol Data Protection Unit) continued with the theme of the Europol framework for the transfer of data to third countries, and dealt with the practical implementation of legal proceedings. There are established practices in place, and the three principles governing the exchange of information with third parties include the following:

- one point of input and output regarding information exchange;
- only evaluated data may be processed and forwarded;
- additional internal auditing.

The Europol Information Management Unit is the single information management and liaison point for third party information. Whenever information arrives at Europol, the aforementioned unit is responsible for the information. This system enables better monitoring and auditing of the process. Information exchanges with third parties are cross checked (legality check; compliance with confidentiality provisions of the agreement; and another check to validate its operational value).

Europol officials follow an established verification procedure:
- who provided the data?
- have they given permission for the data to be utilised?
- do they know its scope?

All this occurs before it is inserted in the data base. If any of the above questions are answered "no", the data cannot be entered.

Another principle relates to an additional control undertaken by the data protection office where regular checks are conducted and logged. The data protection office advises the relevant units. In cases where transmission has to take place on an
exceptional basis, Europol tries to have procedures in place to ensure it is balanced. Europol has a strong interest to have procedures in place to improve human rights and the validity of information.

Comments/Questions from the floor included the following:
Ms Martine ROURE (Member of European Parliament) asked whether the recent Framework Decision on the third pillar could be extended to Europol. The Framework Decision does not define the transfer or access rights of private bodies, and there is a big gap as the transfer to third countries does not refer to "adequacy".

CONCLUDING REMARKS

Mr Michael NIEMEIER commended the constructive character of the hearing, and concluded with three points:
- In the short term, there is a need to improve cooperation between the Member States and the EU, and that is the purpose of the April Council meeting. Short term options do not include a change in the law (i.e. linking liaison officers to national systems).
- The Convention is to become a Council Decision in the medium term. The obligations at the administrative level will be a very difficult undertaking.
- In the long term, one must ask what role will Europol play in the European Security Architecture, and what effect will this have on other bodies?

Mr Max-Peter RATZEL acknowledged the hearing proved a good opportunity to explain the expectations of Europol. Further development of the Europol Convention is necessary. Networks of criminals demand a network of integrated bodies to combat them. There needs to be a transition from "need to know" to "need to share", and there needs to be a wider mandate from organised crime to serious crime (i.e. serial killers, rapists). Limited access to a limited number of private institutions' data is also required. Essentially, citizens expect to live in an Area of Freedom, Security and Justice, but also desire a balanced approach between security and civil liberties.

Mr David SMITH (Europol Joint Supervisory Body) highlighted the importance of processing personal information in Europol, and underlined the strong data protection tradition of Europol. Data protection is needed in Europol, and it is essential that the data stored in Europol is not all about criminals. Data protection serves dual interests: not just preserving citizens' rights, but also building trust. Data protection should of course not stand in the way of effective police cooperation, but should provide a framework for an efficient policy. While there is no problem in principle with the extension of scope, there should be clear added value. There are some changes that have been made without reasoning and justification, and there should be more justification (especially regarding protocols). Data protection provisions must provide individual protection, and the ability to go and inspect Europol's premises is vital to protect personal information. Under the Convention, individual rights for a citizen to access his/her information at Europol proved contentious, as there could be tension between the provisions of the Convention and the law where the application was made. The right of access has to be a real right, and the related proposal in the Council Decision is weaker than the current Convention.
Mr Peter HUSTINX (European Data Protection Supervisor) fully shared all of Mr SMITH’S points, and agreed with the comments on increased efficiency. As highlighted in the recent EDPS opinion on the matter, there are some substantive changes with strong effect (i.e. information from private sources; the provision saying some data should be kept for an indefinite period of time) within the current proposal. The aforementioned issue of interoperability has important consequences. Furthermore, the right of access needs to be examined since the proposal is quite weak in this area. It was suggested to base this on a general principle. Regarding the general frameworks, it was asked how it related to the thinking on developing data protection at Europol. They are related to the applicable safeguards in the Member States, but what are the common rules and standards? To what extent will Europol be subject to Community rules (i.e. staff)? To what extent will it be applicable in data protection? It is important to see what Community rules do in the applicable areas. Will the data protection office be working within two frameworks? What about consistency? And, there is a big question surrounding the exchange of information with other bodies.

Mr Michel GAUDIN underlined the crucial role of data protection, and the importance of examining police issues vis-à-vis data protection. When exchanging data, the facilitators are not just exchanging data on criminals, but on victims too. Therefore, France is very cautious. Data origin is important, and there can be a massive difference in the data depending on which countries the data comes from. It may have to be ensured that those who monitor have the proper means to do so.

Mr Rodolfo RONCONI (Member of the Management Board) spoke of Italian and Europol issues: how the EU needs Europol and how this organisation needs to be able to provide security. In his opinion, the powers of Europol should be extended. The European Police core representatives need to ensure it has the necessary instruments to respect data protection and adequate facilities to utilise data. The freedom of movement has to be put in the context of freedom and security, therefore national police forces and Europol have to work together. Benefit must be made of Europol's added value.

Mr Augustín DÍAZ DE MERA emphasised the need for improved cooperation between the national police forces and Europol to develop operational activities in the short term. In the long term, the Convention has to develop along with operational capacity, and it is imperative that political agreement is achieved in this area. A strong network of information is the only way to combat crime, and a proper balance must be achieved in the exchange of information with private entities. Data must remain confidential. Police forces have to be provided with a more effective and clear framework and data protection supervision should be more independent. In order to protect the rights of the individual, access must be granted. Data retention should be limited to a specified period of time. The collection of data must be necessary and protected; efficiency and simplification are of key concern. He acknowledged Mr RONCONI’S point on how the EU needs Europol. Cooperation between Europol and the institutions is vital, as Europol is increasing the security of EU citizens.