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Accompanying document to the:

Proposal for a

COUNCIL DECISION

establishing the European Police Office (EUROPOL)

IMPACT ASSESSMENT

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1. WHAT PROBLEM IS THE PROPOSAL EXPECTED TO TACKLE?

1.1. Introduction

The European Police Office (Europol) was created in 1995, on the basis of one of the classical instruments of international law - a Convention between Member States. Europol was the first organisation set up under the provisions of the Treaty on European Union, introduced by the Treaty of Maastricht. European co-operation on justice and home affairs mainly took place within the TREVI-framework, and there was little experience with third pillar legal instruments.

Since then, a significant number of legislative instruments have been adopted in this area, including instruments establishing other bodies and agencies dealing with security related issues. The most recent examples of such bodies are Eurojust (the European judicial cooperation unit) and CEPOL (the European training institute for law enforcement). Both these organisations have been set up using the more recent instrument of a Council Decision as their legal basis. This instrument was introduced in the Treaty on European Union by the Amsterdam Treaty. As an instrument to establish organisations, its main advantage over a Convention is that it is relatively easy to adapt to changing circumstances. Whereas any amendment to a Convention normally requires ratification by all signatory parties, changes to a Decision can be decided directly by the Council (by unanimity) after consultation of the European Parliament.

This advantage is particularly relevant for Europol as an organisation, since experience has demonstrated that there is a recurrent need to adapt its legal basis. Since its adoption in 1995, three different Protocols have been adopted to amend the Europol Convention, respectively in 2000, 2002 and 2003. At the time of writing, none of these instruments have entered into force yet, due to the fact that not all Member States have ratified them. All three of these instruments include changes to Europol's legal framework which will significantly improve Europol's effectiveness. Clearly such changes should have entered into effect much sooner, considering that Europol is expected to provide services which are as effective as they can be by the Member States, but also by the European public.

The discussions on Europol's legal basis are in fact not new. Already in 2001, the possibility to replace the Europol Convention by a Council Decision was discussed by the Council. At that time, although a large majority of Member States favoured this solution, it was decided that this issue could best be addressed through the work in the European Convention and the subsequent Intergovernmental Conference, which prepared the Constitutional Treaty.

1.2. Constitutional Treaty

The debate over the past years on the Constitutional Treaty has demonstrated that also at the highest political level, there has been a further development in thinking about how police and judicial co-operation within the European Union can be improved. The Constitutional Treaty thus already provides for improved procedures for reaching decisions on such issues. One of these improvements is the introduction of European laws. In addition, the Constitutional Treaty provides for a new high-

level description of what is expected of Europol. Article III-276 already contains a mandate for Europol which goes beyond the mandate currently included in the Europol Convention. The limits of Europol's work have also been redefined to a large extent in the Constitutional Treaty.

The fact that the Constitutional Treaty would require a change to Europol's legal framework was recognised in the The Hague Programme of 2004. At that time, the expectation still was that the Constitutional Treaty would enter into force quickly. With respect to Europol, the perceived need to bring Europol's legal framework into line with the developments described above, led to the The Hague Programme's target date of 2008 for the adoption of a European Law on Europol.

Another improvement foreseen is an increased role to play for the European Parliament with respect to former third pillar issues in general, including Europol.. The European Parliament has indicated on many occasions that it would want to be more closely associated with Europol's work, including the establishment of its budget. The current weaknesses in the area of democratic control over Europol therefore also need to be addressed, within the scope of the current Treaty.

Considering that the entry into force of the Constitutional Treaty is now much less likely, other ways need to be found to address the issue of how Europol's legal framework can be brought in line with the policy developments described above and the need to provide the organisation with a framework which can be more easily adapted to changing circumstances.

1.3. Europol's functioning can be further improved

The issues described above have been recognised and brought back to the forefront of the political debate mainly through the efforts of the Austrian and Finnish Presidencies of the Council in 2006. Starting with a discussion at the informal JHA Council in January 2006, followed by a High Level Conference on Europol's future in February, work has continued through a number of meetings of a Friends of the Presidency Group. The work done by this Group has been consolidated in an Options paper, which presents a large number of options to improve Europol's functioning. A significant number of these require amendments to Europol's legal framework.

In a general sense then, the discussions held under the Austrian and Finnish Presidencies have demonstrated that even after the entry into force of the three Protocols referred to under 1.1., further improvements to Europol's functioning are possible. Although Europol is continuing to improve the quality of its services and products, a number of difficulties have not yet been addressed. This is partly due to the fact that new security threats have emerged over the past years which require novel approaches to countering them, and which have an impact on the demands made of Europol. In particular the growth in importance of the terrorist threat can be mentioned here.

In addition, novel approaches to sharing information, such as the principle of availability, make it necessary to further adapt Europol's legal framework. Clearly, such approaches need to be balanced with a continued emphasis on robust data protection provisions, and also here Europol's current framework needs to be brought

in line with new developments, in particular the novel approach to data protection in the third pillar.

1.4. Council Conclusions

In conclusion of the work done under the Austrian Presidency of the Council, Council Conclusions on the future of Europol were discussed within the Council structures and agreed at the JHA Council in June 2006. These Conclusions provide clear political guidelines on how the work on Europol's future is to be taken forward. Of particular importance is Conclusion 4, which reads: "Competent Council bodies should commence work in order to consider whether and how to replace by 1 January 2008, or as soon as possible thereafter, the Europol Convention by a Council Decision as foreseen in Article 34(2)(c) TEU, where possible on the basis of a concrete initiative or proposal." The current proposal will provide the basis for further work in this area, which should commence quickly in order to reach the desired deadline of 1 January 2008. Preliminary discussions within the Council structures under the Finnish Presidency on how these Conclusions should be taken further have demonstrated that also now there is overwhelming support from the Member States for replacing the Europol Convention with a Council Decision.

1.5. Conclusion

In summary, the problem which the proposal aims to address is two-fold: on the one hand, it appears that the current Europol Convention, and its procedures for amending it, do not allow for politically agreed changes to enter into force within a reasonable timeframe. This means that unacceptable amounts of time are lost during which Europol can not work to its best abilities. There is a clear need for a legal framework for Europol which can be more easily adapted to take account of changing circumstances and policy goals.

On the other hand, the recent discussions on Europol's future have demonstrated that even when the amendments to the Europol Convention which were laid down in three separate Protocols have entered into force, there is still room for a significant number of other improvements to Europol's legal framework. In other words, the discussions have once again demonstrated the recurrent need to adapt Europol's legal framework in order to allow it to fulfil the role Member States and the European citizens demand of it.

Another issue which the proposal aims to address is the current weakness in the area of direct democratic control over Europol. Even though the European Parliament and national Parliaments have tried to address this situation in the past, under the current legal framework their involvement in Europol's work is limited – mainly due to the limitations found in the Treaty on European Union. Although this last issue can clearly not be addressed directly through this proposal, converting the Europol Convention into a Council Decision will in fact lead to an increased role for the European Parliament in the control over Europol, as discussed further below.

2. WHAT ARE THE OVERALL POLICY OBJECTIVES ?

The overall policy objective of the proposal is to provide Europol with a legal framework which can be more easily adapted to changing circumstances than the current Europol Convention and its amendment procedures. In addition, the policy objective is to provide for a new legal basis for Europol which takes account of the most recent developments in the area of European law enforcement co-operation, and provides solutions for the issues identified in the most recent discussions on Europol's future.

In terms of concrete policy objectives the proposal should:

- ensure that Europol will be able to better fulfil its mission of supporting the law enforcement authorities of the Member States in their fight against serious crime, including terrorism;
- ensure that Europol's mandate is brought in line with the high level political vision for Europol laid down in the Constitutional Treaty;
- ensure that Europol's legal framework will be brought in line with the legal framework of other bodies working in the third pillar area, in particular Eurojust and CEPOL;
- ensure that Europol's legal framework will allow it to fully support the principle of availability of law enforcement information, in line with the Commission's proposal to that effect¹;
- ensure that improvements to Europol's functioning which go beyond its current legal framework can be achieved, within the generally accepted limits of its mandate, role and tasks;
- ensure that the high level of data protection which is currently guaranteed through the Europol Convention and its implementing measures will be maintained or improved upon where feasible;
- ensure an increased involvement in Europol's functioning of the European Parliament;
- ensure that Europol's day-to-day work is not unduly influenced by changes to the legal framework though carefully considered transitional arrangements which provide legal certainty for Europol and its partners and respect the existing rights of Europol staff.

All these policy objectives should be achieved in line with the overarching policy objectives established with respect to the creation of a European Area of Justice, Liberty and Security, as well as the general policies on law enforcement co-operation across the European Union, including its international aspects, and the general policy related to agencies and bodies of the European Union.

¹ COM(2005) 490, 4.10.2005.

The proposal should constitute a positive answer to the concerns of Europol, the law enforcement authorities of the Member States, European citizens and the European Parliament to be able to rely on a European law enforcement organisation which has the best tools, instruments and procedures to allow it to contribute to the fight against terrorism and organised crime to the best of its abilities.

3. WHAT ARE THE MAIN POLICY OPTIONS AVAILABLE TO REACH THE OBJECTIVES?

3.1. Introduction

A number of different policy options to reach the objectives described above in Section 2 have been considered by the Commission in the preparation of this proposal, most of which were discarded at an early stage given the developments in this area over the past few years.

3.2. The “do nothing” option

The first option to be considered with any proposal is what the consequences would be if no action were to be taken at all. In this particular case, that option was soon discarded, given the clear difficulties which are currently experienced with the procedures for amendment of the Europol Convention. A dynamic and effective European law enforcement organisation can not function to the best of its capacities if changes to its main legal instrument can only enter into force four or five years after they have been decided at the highest political level. In addition, the consultations started by the Austrian Presidency of the Council demonstrated that many options to further improve Europol's functioning were supported by the Member States.

If no proposal would be put forward at this stage to improve Europol's legal framework, it would have meant that these issues could not be addressed for another long period. As long as no agreement has been reached on the future of the Constitutional Treaty, it remains uncertain what future legislative instruments would be available to improve Europol's current situation. Given that uncertainty, arguments were considered to determine whether the current moment is the right one to put forward a proposal. These considerations led to the conclusion that even if during the course of discussions on this proposal in Council progress were to be made at the level of primary law, the discussions would not have been in vain. The reason for this conclusion is that even if it were to become possible to replace the Europol Convention with a new legal instrument under new primary law, the actual content of the proposal could still be maintained for the largest part. In other words, the results of the political and legal discussions in Council on the basis of the current proposal could easily be converted into a new legal instrument, as and when required by new primary law.

A final point in these considerations was the fact that the JHA Council, in its Conclusions of 1-2 June 2006, has called for quick action on this point – as stated above under point 1.4, these Conclusions call upon Council bodies to “consider whether and how to replace by 1 January 2008, or as soon as possible thereafter, the Europol Convention by a Council Decision as foreseen in Article 34(2)(c) TEU, where possible on the basis of a concrete initiative or proposal”.

3.3. Is a Protocol to abrogate the Europol Convention necessary?

A second option which was considered was to replace the Europol Convention by a Council Decision, but to propose at the same time a Protocol to abrogate the Europol Convention. This option was considered since some legal experts indicated that the entry into force of such a Protocol would be necessary before a Europol Council Decision could enter into force. This legal issue was studied in depth during the preparation of this proposal. The main disadvantage of this option is clearly that a Protocol abrogating the Europol Convention would itself be an instrument which would require ratification by all the Member States. Consequently, based on the earlier experiences, the entry into force of the Europol Decision would be delayed significantly, possibly by four or five years.

After careful legal analysis, a legal opinion on this issue was published as a Commission Staff Working Document - SEC(2006) 851, 21.6.2006. This Working Document outlines the main reasons why the Commission is of the view that it is possible to replace the Europol Convention by a Council Decision without the need for a Protocol abrogating the Europol Convention. The arguments which support this position are firstly, that there is no hierarchy between the different instruments put at the disposal of the Council through Article 34(2) of the Treaty on European Union. Secondly, the freedom of the European Union legislator, as determined by primary Treaty Law, can not be limited through an instrument of a lesser legal order, such as the Europol Convention. And thirdly, the involvement of national Parliaments is ensured through the national implementation procedures which Member States will need to employ to give effect to the Europol Council Decision.

After publication of this opinion, this issue was also discussed again within the Council structures. In these discussions, the Commission's position was supported by a very large majority of Member States, as well as by the Legal Service of the Council. The option of proposing a separate Protocol to abrogate the Europol Convention was therefore discarded.

3.4. Community Financing

A third option would have been to replace the Europol Convention by a Council Decision without stipulating that Europol would be financed from the Community budget. However, the Commission has consistently held that financing Europol from the Community budget is preferable over the current system, where Europol is financed directly from the budget of the Member States. A system of Community financing would also be in line with the new legal instruments foreseen under the Constitutional Treaty. As a consequence of this position, the Commission had already included amounts for the financing of Europol in the budget planning under the Financial Framework 2007-2013. This financial planning has in the meantime been approved by the Council.

In the Commission's perspective then, the political choice for financing Europol from the Community budget is the only logical one. There are a number of reasons for this.

Firstly, as already mentioned above, one of the consequences of this choice is that the European Parliament will be directly involved in the establishment of Europol's

budget, through its role as co-legislator with the Council on the general Community budget. Council and Parliament will decide together on Europol's budget, as part of the overall budget decision making process. As indicated above, this change would go a long way towards addressing the current weaknesses in the democratic control over Europol.

In addition, the standard provisions applicable to other EU bodies on budgetary mechanisms and controls will apply to Europol. This will simplify and standardise these mechanisms with those tried and tested in other agencies, both first and third pillar. It will also involve full control of Europol's budget by the European Court of Auditors, again as part of the normal budget procedures. Also, the Financial Regulation applicable to Europol's budget will be brought in line with these procedures – Europol will have to adopt a Financial regulation which follows the established model for this. Standard procurement methods and payment authorisations will replace those currently in place at Europol.

Financing of Europol from the Community budget will also automatically entail that Europol's staff will become subject to the EU Staff Regulations. This does not mean that all current Europol staff would become permanent officials – the EU Staff Regulations provide for a number of different forms of employment, including temporary contracts.

The application of the EU staff regulations will in fact provide for more flexibility in terms of personnel management, as some of the currently applicable limitations would be abolished. Clearly the application of the EU Staff Regulations would imply a careful consideration of transitional issues, which should respect the existing rights of Europol staff. These detailed transitional issues can be addressed in the new Europol Council Decision.

Subjecting Europol to all these standard instruments will result in a significant administrative simplification, which will mean that Europol will be in a position to devote more of its resources to its core tasks, instead of on administrative procedures. The administrative simplification will also have significant benefits for Europol's Management Board, which will no longer need to spend much of its valuable time on recurring administrative issues. The same is true for the Council structures – the administrative simplification will also decrease the amount of time these structures will need to spend on Europol's administrative issues. Both the Europol Management Board and the respective Council structures will consequently have more time to spend on dealing with the more important strategic and operational decisions on Europol.

In addition it should be noted that under Article 41 (3) TEU "Operational expenditure to which the implementation of those provisions gives rise shall (also) be charged to the budget of the European Communities, except where the Council acting unanimously decides otherwise".

Considering all these issues, the Commission came to the conclusion that the best option would be to propose that Europol would be financed from the Community budget.

3.5. Which legal instrument?

Considering the legislative instruments put at the disposal of the Council under the Treaty on European Union, clearly a Convention would not solve the issues surrounding Europol's legal framework, since these are largely caused by the fact that Europol is now based on a Convention. In general terms, Conventions have not been the most successful legal instruments of the third pillar – none of the Conventions concluded since the entry into force of the Treaty of Amsterdam has entered into force at the time of writing. Thus only a Framework Decision or Council Decision have been considered.

In accordance with the Treaty on European Union, a Framework Decision is an instrument aimed at harmonising the legislation of Member States. The setting up of a body of the European Union is clearly not intended primarily to harmonise the national legislation of the Member States, even though it may have some harmonising effects.

A Council Decision based on Article 34(2)(c) TEU, is therefore the most appropriate instrument for establishing a body under Title VI TEU. This legal basis was also used to establish Eurojust and CEPOL. The fact that such a Decision does not have direct effect will mean that Member States will need to review their national legislation with regard to Europol to verify whether they need to provide for national law which implements the Council Decision.

3.6. Other options considered

In the preparation of the proposal, many options for improving Europol's functioning have been studied. These options have to a large extent been identified through the thorough work of the Austrian Presidency of the Council. As indicated above, one of the results of the work done under the Austrian Presidency has been a so-called "options paper"² in which all the options to improve Europol's functioning which have been brought forward during the discussions with the Member States, the Commission, Europol, Eurojust and other interested parties were brought together. Many of these options could only be realised through changes to Europol's legal framework, and were therefore classified as long-term options. Although it would go too far within the context of this impact assessment to discuss each of these options in detail, the most important options will be discussed under Section 4 of this document. In particular explanations are provided regarding those options which were included in the proposal.

² 9184/06, EUROPOL 40 of 10 May 2006.

4. WHAT ARE THE IMPACTS – POSITIVE AND NEGATIVE – EXPECTED FROM THE RETAINED OPTION?

4.1. Expected positive and negative impacts of the option selected

In general terms, the expected positive aspects of the proposal are to a large extent related to the policy objectives identified under Section 2. In other words, the proposal aims at providing the positive impacts associated with these policy objectives. Some further details on this can be provided as followed:

Policy objective:

- ensure that Europol will be able to better fulfil its mission of supporting the law enforcement authorities of the Member States in their fight against serious crime, including terrorism;

Positive impact:

Clearly this high level policy objective aims at contributing to an area of freedom, security and justice for the citizens of Europe. The general goal is to improve Europol's functioning through providing a legal framework which is better-tailored to the needs of both Europol and the law enforcement organisations it supports. All changes proposed should ultimately contribute to this goal, but perhaps the most important ones are those related to the extension and better description of Europol's mandate, the modernised provisions on the processing of personal data at Europol, the simplified management and administrative procedures, and the re-designed provisions on Europol's relationships with its partners both inside and outside of the European Union.

Negative impact:

None.

Policy objective:

- ensure that Europol's mandate is brought in line with the high level political vision for Europol laid down in the Constitutional Treaty;

Positive impact:

The most directive positive effect of the change to Europol's mandate is that it is no longer bound to the restriction that an organised criminal structure must be involved before Europol can act. This requirement has caused many problems of interpretation in daily practice, which has hampered Europol from becoming fully effective in certain areas, such as combating money laundering. Also, it is clearly a benefit to the European citizens that Europol will now also be able to assist investigations into serious crimes committed in more than one Member State of the European Union, such as a serial killer which is active in more than one Member State, or sex offenders. Clearly the possibility to bring information on such cases together at Europol and have the available information analysed can contribute significantly to effective investigations in such cases.

Also, the possibilities for Europol to monitor the internet and assist in the identification of those who use the internet to commit crimes such as those related to terrorism or distribution of child pornography will bring benefits to the national law enforcement authorities involved in investigating such crimes, allowing them to focus their resources more effectively.

Negative impact

None. No operational or executive powers are proposed for Europol which would affect citizens rights more than is the case now, or would require additional safeguards. National criminal procedural law remains unaffected.

Policy objective:

- ensure that Europol’s legal framework will be brought in line with the legal framework of other bodies working in the third pillar area, in particular Eurojust and CEPOL;

Positive impact:

The most direct positive impact of this change had been mentioned a number of times already – creating a Council Decision as the legal basis for Europol as an organisation will ensure that any further changes to its legal framework which may become necessary in the future can be implemented much more quickly than under the current system, with its time-consuming procedure of amendments to the Europol Convention which require ratification in 25 or 27 Member States. Considering that under the current system, where the Protocols amending the Convention needed to be ratified by 15 Member States, ratification of such amendments took between three to six years, a similar ratification process with the involvement of 27 Member States is likely to require even longer periods.

Other associated positive impacts are related to the fact that, as already partly explained above under Section 3.4, the application of well-known and modernised provisions regulating Europol’s budget and the associated procedures, as well as the application of the EU Staff Regulations to Europol’s staff, will significantly simplify the management of the organisation, its possibilities of attracting and recruiting the best qualified staff, as well as the decision making and control over its budget.

Just one example is given here to illustrate this point. Under the current budget and staff rules, Europol’s Management Board, its Financial Committee and all Council structures involved in Europol’s work have to decide each year on the percentage with which the Europol salaries will be adapted, taking account of a number of factors, including price development in the Hague and developments of the salaries of civil servants in the Member States. Needless to say, this is a highly complex and politically sensitive task, which involves a large number of both Member State and Europol financial and personnel experts, and comes back every year. Under the newly proposed system, this whole procedure will no longer be necessary, since a similar procedure is used to calculate changes in salaries for all European civil servants. This will then be directly applicable to Europol staff.

The applicable time consuming procedures which need to be followed under the existing system are a consequence of the fact that Europol is currently the only EU-related organisation which has a completely separate system of staff and financial regulations. Even though these regulations are to a large extent based on those applicable to other EU bodies and agencies, the fact remains that they are slightly different, and all need to be adapted independently of all other applicable regulations.

Negative impact:

Although it is certainly true that the transition to a system where Europol will be subjected to the general financial and staff rules will require a significant amount of work, this is a one-off investment which will greatly reduce administrative overhead in the long run.

Policy objective:

- ensure that Europol's legal framework will allow it to fully support the principle of availability of law enforcement information, in line with the Commission's proposal to that effect³;

Positive impact:

The positive impact of the principle of availability is an enhanced emphasis on the need for law enforcement organisations to share information with both their national and international partners. The lack of information exchange is a widely recognised as a negative factor impacting on the effectiveness of law enforcement action, both at national and international levels. Enhanced availability, and thus exchange, of relevant law enforcement information will allow the responsible authorities to find links between information which until then were hidden. Clearly this is particularly relevant for Europol, considering that one of its main strengths is in the collation and analysis of law enforcement relevant information.

In the preparation of the proposal, it was recognised that at the current time, even if there is wide-spread political support for the principle of availability, its implementation in daily practice will still require extensive discussions. The proposal in this area is therefore limited to providing a clear legal basis for Europol to have wider access to both national and international databases – however including a clear indication that such access is only possible if the applicable national or international legal instruments provide for this. Usage of any data obtained through access to databases outside of Europol will be subject to both the detailed data protection provisions of the Europol Decision, and to any further applicable provisions concerning this which may be included in the respective instruments granting Europol access.

Negative impact:

None. As indicated above, wider access to relevant information will be strictly regulated through the Europol Decision and any applicable national or international legal instruments.

³ COM(2005) 490, 4.10.2005.

Policy objective:

- ensure that improvements to Europol’s functioning which go beyond its current legal framework can be achieved, within the generally accepted limits of its mandate, role and tasks;

Positive impact:

This policy objective is mainly related to ensuring that the proposal takes account of the many different options identified to improve Europol’s functioning during the Austrian Presidency of the Council. Including these options in the proposal will have the clear positive impact that the rules related to Europol’s functioning will be brought in line with the wishes of the Member States and their law enforcement authorities.

One of the clear messages which became apparent through the wide-ranging consultation process mentioned before is that Member States did not wish to see a future Europol which would be radically different in terms of its mandate and tasks from the current Europol. In other words, the Member States did want to see a careful evolution of Europol as an organisation, but they did not support a “revolution” in the sense of a completely redesigned organisation.

In line with this clear message, the proposal does include a significant number of the changes proposed and supported by the Member States and Europol, but does not change the character of the organisation fundamentally. Nevertheless, the combined effect of the changes included is expected to have a significant positive effect on Europol.

Negative impact

The implementation of the different options by Europol will require some effort and adaptation. However, the positive impact is expected to far outweigh any negative impact which may be associated with the need for changes at Europol to implement its new legal framework.

Policy objective:

- ensure that the high level of data protection which is currently guaranteed through the Europol Convention and its implementing measures will be maintained or improved upon where feasible;

Positive impact:

The positive impact of maintaining the current level of data protection and improving upon this where feasible is clear, both in terms of the protection of citizen’s rights and in terms of ensuring full trust in Europol as a reliable and trustworthy law enforcement organisation by the authorities of the Member States.

The proposal contains a number of detailed changes to Europol’s data protection regime, all aimed at clarifying and simplifying the currently applicable provisions wherever feasible.

One of the positive aspects of the data protection regime at Europol has been the relation between Europol and the Joint Supervisory Body, Europol's independent data protection control authority. The role of this Joint Supervisory Body is left largely unchanged – apart from some drafting improvements which confirm the existing practice that the JSB is consulted on all implementing rules which have a link to data protection issues. In addition, the proposal foresees possibilities for co-operation with the European Data Protection Supervisor where appropriate.

A significant improvement in the area of data protection is the introduction at Europol of an independent Data Protection Officer, who will report directly to the Management Board, but will be independently in the exercise of his functions. Also, he will have the powers to report to the Management Board and to the Joint Supervisory Body, if required, in those cases where a data protection issue is not resolved within a reasonable period of time.

Negative impact:

None.

Policy objective:

- ensure an increased involvement in Europol's functioning of the European Parliament;

Positive impact:

The involvement of the European Parliament in the decision making procedure to establish Europol's budget will mean an increased involvement at the European level of the institution best suited for this. The European Parliament has demonstrated a consistent interest in being more closely involved in Europol's work, and this change will ensure that this is possible, within the limits of the existing Treaties.

Negative impact:

None.

Policy objective:

- ensure that Europol's day-to-day work is not unduly influenced by changes to the legal framework though carefully considered transitional arrangements which provide legal certainty for Europol and its partners and respect the existing rights of Europol staff.

Positive impact:

The positive impact of well-considered transitional arrangements will be that Europol can continue to focus on its core tasks, even whilst the transition process is underway. Especially considering that the proposal relates to an organisation which employs more than 400 people, with an annual budget of around 60 million Euro, and well established relations with dozens of partners, the change process must be managed carefully and transparently for all involved.

Negative impact:

Any re-organisation which affects all the staff of a particular organisation will in all likelihood generate some feelings of anxiety and resistance to change. This is only natural, and can be managed through careful communication and respecting established rights. Once it becomes clear that this proposal only aims at improving the situation for Europol, without reducing any rights of its staff, wide acceptance of and support for the change process can be expected.

4.2. Financial impact

The main financial impact of the proposal will be caused by the change from financing Europol from the budgets of the Member States to financing Europol from the Community budget. As explained above, one of the consequences of this choice is that Europol's staff will in the future come under the general Staff Regulations applicable to all staff of the institutions, bodies and agencies.

With respect to the choice for financing Europol from the Community budget as such, no significant financial impact is to be expected for the Member States. The choice for a different system of budgeting does not change the financial burden on the Member States, given the fact that the key for distribution of these costs between the Member States is the same under the current Europol Convention as it is when Europol will be financed from the Community budget. For the Community budget as such, it is clear that the budget will have to be increased with the amounts necessary to ensure that Europol can be financed. As stated before, appropriate amounts have already been reserved under the Financial Perspectives 2007-2013 to take account of this. The amounts currently reserved start at 82 million Euro for 2010, running up to 85 million Euro in 2013. These figures are in line with the increases in Europol's budget to be expected for that period, and are also in line with Europol's latest five year financial planning.

The exact financial impact of the fact that Europol will come under the EU Staff Regulations can not be calculated at this time, since this will depend to a large extent on the numbers of staff which will make use of the transitional arrangements. The proposal is based on the assumption that staff which will be working for Europol at the time of the entry into force of the Decision will be offered an opportunity to be recruited on a temporary contract under the EU Staff Regulations. Nevertheless, it should be recalled that the differences in salary levels between the EU staff regulations and the EC Staff regulations are not dramatic, so no significant increases in staff costs are foreseen.

In conclusion, the financial impact of the proposal is expected to be minimal in terms of the costs of running Europol for the Member States. The Community Budget will be increased with the amounts necessary for Europol's budget, but these amounts have already been reserved. The transition to a different system of Staff Regulations should not cause a significant increase in the salary costs of Europol.

4.3. Fundamental Rights

The proposal is in line with Community law and with the Charter on Fundamental Rights. Even though it is clear that the proposed Decision will have an effect on the

privacy right of citizens as guaranteed under Article 7 of the Charter, as well as on the right to protection of personal data as guaranteed under Article 8 of the Charter, the interference with these rights is justified in accordance with of Article 52 of the Charter. Specifically, the limitations on these rights provided for by the proposal are proportionate and necessary to meet the generally recognised objectives of preventing and combating crime and terrorism.

Furthermore, the proposal limits its effects on the private life of citizens. As stated above, one of the important starting points in the preparation of the proposal has been to ensure that the current high level of data protection at Europol will be maintained or improved where feasible. The existing regime of data protection at Europol has proven to be effective and proportionate, and has not led to significant complaints from citizens or other affected parties. The reports of Europol's Joint Supervisory Body have been largely positive, and have contributed constructive criticism to ensure that the principles of data protection currently embodied in the Europol Convention are implemented as intended. Europol's activities are inspected on a regular basis by the Joint Supervisory Body through detailed data protection audits. All the safeguards which have been put in place in the past to ensure this level of data protection are untouched by the proposal. In some instances, such as the introduction of an independent Data Protection Officer at Europol, and the simplification and clarification of the rights of citizens, the level of protection has even been improved upon.

Although it is true that the proposal includes new possibilities for Europol to process personal data, these possibilities do not present any significant additional risk. The processing of data, also in new data processing systems, can only take place in accordance with the general rules to be established by the Council, in line with the existing provisions on data processing at Europol. This also means that all rights of citizens, such as the right of access, and the right of correction/deletion will be fully applicable also to any new data processing systems which may need to be put in place in the future. Also the limitations with respect to access to and usage of the data will fully apply.

In conclusion on this point the Commission is convinced that its proposal can stand the test of compatibility with fundamental rights and freedoms.

4.4. Are there impacts outside the Union on the Candidate Countries and/or other countries ("external impacts")?

The impact of the proposal outside of the European Union is mainly determined by two different aspects of the proposal. One of these relates to the transitional arrangements, in particular with respect to existing agreements between Europol and partners outside of the European Union. The other aspect relates to the revised provisions on Europol's international relations. These two aspects are dealt with below.

When considering the impact of the proposal on Europol's international relations, the first important point has been that the proposal should aim to ensure that existing relations between Europol and its international partners are not jeopardised. At the current time, Europol has concluded a significant number of international agreements, and clearly these agreements should continue to be fully applicable, also

in the new situation. The transitional provision therefore provides that all existing agreements will continue to be in force.

An additional point of consideration is the fact that many of the agreements which Europol has concluded contain a provision stating that if Europol's mandate is changed in any way, the co-operation partner of Europol is informed therefore in advance, and is given a period of time to consider whether this change has an effect on the agreement in force, and if yes, whether this should lead to any changes. This is a normal procedure to deal with changing circumstances – in those cases where there is a significant change, both partners to an international agreement must have an opportunity to see whether this affects their position in any way, and whether any changes to practical implementation of amendments of the agreements are considered to be necessary. This principle will need to be applied here as well.

The second aspect relates to Europol's international relations after the entry into force of the proposal. One of the points which came back on a recurrent basis when discussing options to improve Europol's functioning was the fact that the current provisions on Europol's international arrangements are highly complex, lead to long procedures, and are dispersed over a large number of different provisions and implementing measures, making the system hard to understand and operate. The proposal aims to address these issues, but also to revise the system in such a way that Europol's international relations will be more closely associated with the external relations strategy of the Union as a whole. This is a logical step following from the fact that the European Union has recently adopted an external relations strategy in the field of Justice and Home affairs for the first time.⁴ The proposal therefore limits Europol's own possibilities of concluding agreements with third States – such agreements should in the future be negotiated on behalf of the European Union. This will ensure consistency with the EU's external strategy, but also ensure consistency with respect to international agreements with other EU bodies, such as Eurojust. The overall aim is to come to over-arching agreements with third States and parties which would regulate all aspects of co-operation between them and the European Union in the area of Justice and Home Affairs.

It is expected that both aspects will have a positive impact on Europol's ability to co-operate with third States and bodies.

4.5. What are the impacts over time?

The expected impact over time is that Europol will first have to go through a transitional period after a decision on the proposal has been reached. This period will necessarily involve a significant effort to ensure that all the necessary instruments will be put in place in order for the new legal framework to achieve its desired effects. The proposal takes this into consideration, and contains a transitional provision which guarantees that the Decision will not take full effect until all the implementing measures necessary have been agreed and adopted. It should be stressed that these efforts will weigh predominantly on the administrative staff of Europol, mainly the legal, financial and personnel units. Europol staff involved in the

⁴ 14366/3/05, JAI 417, RELEX 628 of 30 November 2005.

support of investigative actions will not be affected directly, or only to a limited extent.

Once the transitional period has finished, and the Europol Decision is fully applicable, Europol, its Management Board and the national law enforcement authorities concerned will need to reflect on how they can best make use of the possibilities offered by the new legal framework. A certain period will be needed of all involved actors to become acquainted with the new system. After this period, however, the "new " Europol will gradually develop into its full potential.

5. HOW TO MONITOR AND EVALUATE THE RESULTS AND IMPACTS OF THE PROPOSAL AFTER IMPLEMENTATION?

The results and impacts of the proposal after implementation will be monitored and evaluated on a continuous basis, mainly by Europol's Management Board, but also by the Council, the Commission and the European Parliament. The current system, where the Council is involved with all important decisions concerning Europol (including the nomination of its Director, the work programme and budget) will not be changed in principle – apart from the stronger involvement of the European Parliament in the process of establishing the budget. The Council will also continue to determine the priorities for Europol's work. The Commission will also continue to be closely associated with Europol's work, through its participation in Europol's Management Board, and through its modified role in the budget procedure.

In addition, the proposal specifies that the Director will establish a monitoring system in order to collect indicators of the effectiveness and efficiency of the duties performed within Europol. Also, within five years after the application of the Decision and every five years thereafter, the Management Board must commission an independent external evaluation of the implementation of the Decision as well as of the activities carried out by Europol.

6. STAKEHOLDER CONSULTATION

6.1. Consultation methods, main sectors targeted and general profile of respondents

As indicated before, the proposal is to a large extent based on the wide consultation of interested parties under the Austrian Presidency of the Council. Starting with a discussion at the informal JHA Council in January 2006, followed by a High Level Conference on Europol's future in February. This High Level Conference brought together representatives of the law enforcement authorities of the Member States, of Europol and Eurojust, of Europol's Joint Supervisory Body, of the Commission, and of academia. The conclusions of this High Level Conference are discussed in more detail under section 6.2.

After the High Level Conference, work continued through a number of meetings of a Friends of the Presidency Group, in which almost all Member States were represented. These meetings provided for ample opportunity for the experts involved to discuss the possibilities and options for Europol's future in depth. The results of this work were consolidated in an Options paper, which – as indicated before -

presents a large number of options to improve Europol's functioning. A significant number of these require amendments to Europol's legal framework.

Further contacts with interested parties – including Europol – in the preparation of the proposal also proved beneficial in the preparation of the proposal.

6.2. Summary of responses and how they have been taken into account

Many different examples of the results of the consultations conducted have already been discussed in earlier sections of this report. This paragraph provides an abbreviated overview of the responses received.

The High Level Conference of 23 and 24 February 2006 mentioned under section 6.1. was intended to provide material for the further work on defining the contemporary thinking on the future of Europol. One of its conclusions was that using the current version of the TEU as a basis for Europol would mean to replace the Convention by a Council Decision. As to the mandate of Europol it was suggested that a careful widening of the mandate would be in the interest of all Europol stakeholders, but that no full law enforcement competencies for Europol are desired. This widening should enable Europol to become 'more operational', meaning that Europol could, to name a few examples, more directly support joint investigation teams and deal with crimes of a particular European nature such as trafficking in human beings or counterfeiting of the Euro. A clear description of the competences is wished for, with the wording of the Constitutional Treaty outlining a framework for discussion. It was felt that changes to the current Article 2 of the Europol Convention are necessary. Europol should be tasked to deal with "transborder serious crime".

Cooperation with third States and international organisations was identified as an issue of particular relevance. The modalities for Europol to enter into structured cooperation with third parties, however, clearly need improvement. As an example, the Conference noted that ways should be found to enable Europol to exchange information also with countries that do not have the same data protection standards as those that are applicable within the European Union.

The Conference also concluded that Europol needs better access to information. The discussion on the supply of data by the MS should be continued and new ways to enable Europol to get the right data into its files should be explored.

More complex changes in the understanding of Europol's role also promise to deliver new results: a different attitude towards the existing cooperate governance system applied for Europol can be named as an example here. It should be attempted to streamline the decision making processes of the Management Board, the Director and other bodies such as PCTF or the Council structure. To give an example, both the Member States and Europol feel that too much paper work is involved in the Management Board's work. Resources could possibly be saved on both sides if a clear expectation would be expressed on the precise role of the Management Board in Europol's Corporate Governance. Making the bodies representing the Member States towards Europol act in a more common way and have them express their views on Europol's direction with one voice will clearly increase the efficacy of Europol's corporate governance system.

Proposals were made for the Management Board to act more strategy minded. Often the work by the Management Board should be more directly prepared by sub-groups of the Management Board. For that to be possible clear instructions from the Management Board are needed, and consistent Member States' representation in the different levels of Europol's corporate governance.

In conclusion of the Conference the following conclusions were drawn up by the chairman (amongst others):

- the Europol Convention should be transformed into a Council Decision.
- a debate on an extension of the Europol mandate should be started. By strengthening its support capacity Europol should become more operational.
- a debate should be commenced on the transformation of Europol into an agency, following the example of CEPOL.
- a comprehensive concept for the relations between Europol and other relevant institutions in the EU and the Member States should be established.
- the corporate governance of Europol needs to be streamlined; the Director should be given the possibilities to effectively implement the strategic directives given by the Member States.
- the role of Europol in the implementation of the principle of availability and concepts for enhancing and guaranteeing the exchange of data between Member States and Europol should be looked into.
- more flexible rules for data protection should be developed whilst at the same time maintaining the high standards achieved so far.
- democratic control of Europol should be developed in accordance with the extension of Europol's powers.
- Europol should become more visible in the law enforcement community and the public.
- a new form of cooperation between Europol and the Member States is evolving. Attempts should be made to allow this relationship to further grow and prosper.

These high-level indications of what was expected for a future Europol were then further defined and discussed by the Friends of the Presidency Group. To a large extent, these discussions confirmed the general line of thinking which became clear at the High Level Conference – many of the ideas coming out of the Conference were discussed in more detail and laid down in the final Options paper. As indicated before, both the results of the High Level Conference and the work of the Friends of the Presidency Group, as laid down in the Options paper, have been the inspiration for the largest part of the Commission's proposal.

Given that this work had already involved all interested parties, further formal consultation efforts were not considered necessary in the preparation of the proposal.

7. COMMISSION DRAFT PROPOSAL AND JUSTIFICATION

7.1. What is the final policy choice and why?

As explained in more detail elsewhere in this document, notably in Section 3, the initiative chosen consists of a proposal for a Council Decision establishing Europol, and replacing the current Europol Convention. The final objective is to create a completely new legal framework for Europol, which will improve its effectiveness in supporting the law enforcement authorities of the Member States.

The reasons for this policy choice have been clarified earlier in this document as well. Detailed indications have been provided of other options considered, and some of the most important policy choices made in the preparation of the proposal have been explained in detail. Considering all these different points, the Commission came to the conclusion that Europol needs an up-dated legal framework, in the form of a Council Decision, that it should be financed from the Community Budget and that its staff should become subject to the general EU Staff Regulations. Many detailed improvements can also be achieved, without changing the fundamental character of Europol as a law enforcement support organisation for the Member States. Such improvements have been included in the proposal.

7.2. Why was a more/less ambitious option not chosen?

As indicated before, it is the Commission's view that the proposal best reflects the current thinking on the future of Europol, both in terms of its legal framework, and in terms of its mandate and tasks. More ambitious options – particularly related to possibly providing Europol with independent powers of investigation, for example in cases of counterfeiting the Euro – have been discussed but were soon discarded. The common view appears to be that as long as there is no overarching system of European criminal justice, it is too early to even contemplate such independent powers. Also, the current limits to Europol's development have been laid down clearly in the Constitutional Treaty – any proposal which would go beyond that commonly accepted basis would be unrealistic and counter-productive.

Less ambitious options, such as the "do-nothing" option, were already discussed previously. None of the less ambitious options offer the significant advantages of the current proposal. Perhaps the most significant disadvantage of less ambitious options would be that Europol would continue to be impaired by its current inflexible legal framework, and the many options identified for improving its functioning could not be realised.

7.3. Which are the trade-offs associated to the chosen option?

There are no specific trade-offs associated with the chosen option, other than the general trade-off which appears to be inevitable when considering law enforcement work and its possible impact on the rights of citizens. Any law enforcement action, be it at the national or international level involves trade-offs between a limitation of the privacy of individuals, against a society which is more secure through more effective law enforcement action in preventing and combating serious forms of crime and terrorism.

7.4. If current data or knowledge are of poor quality, why should a decision be taken now rather than be put off until better information is available?

A proposal for a Decision has become urgent, notably in view of the discussions in Council described earlier in this document. Better information is unlikely to become available within an acceptable amount of time.

7.5. Have any accompanying measures to maximise positive aspects and minimise negative impacts been taken?

No accompanying measures other than those included in the proposal and discussed previously under chapter 4 have been considered to be necessary.