

HOUSE OF LORDS

European Union Committee

29th Report of Session 2007–08

**EUROPOL:
coordinating the
fight against serious
and organised crime**

Report with Evidence

Ordered to be printed 28 October 2008 and published 12 November 2008

Published by the Authority of the House of Lords

London : The Stationery Office Limited
£price

HL Paper 183

The European Union Committee

The European Union Committee is appointed by the House of Lords “to consider European Union documents and other matters relating to the European Union”. The Committee has seven Sub-Committees which are:

Economic and Financial Affairs and International Trade (Sub-Committee A)
Internal Market (Sub-Committee B)
Foreign Affairs, Defence and Development Policy (Sub-Committee C)
Environment and Agriculture (Sub-Committee D)
Law and Institutions (Sub-Committee E)
Home Affairs (Sub-Committee F)
Social and Consumer Affairs (Sub-Committee G)

Our Membership

The Members of the European Union Committee are:

Lord Blackwell	Lord Mance
Baroness Cohen of Pimlico	Lord Plumb
Lord Dykes	Lord Powell of Bayswater
Lord Freeman	Lord Roper
Lord Grenfell (Chairman)	Lord Sewel
Lord Harrison	Baroness Symons of Vernham Dean
Baroness Howarth of Breckland	Lord Tomlinson
Lord Jopling	Lord Wade of Chorlton
Lord Kerr of Kinlochard	Lord Wright of Richmond
Lord Maclennan of Rogart	

The Members of the Sub-Committee which carried out this inquiry (Sub-Committee F) (Home Affairs) are:

Lord Dear
Baroness Garden of Frognal
Lord Harrison
Baroness Henig
Lord Hodgson of Astley Abbots
Lord Jopling (Chairman)
Lord Marlesford
Lord Mawson
Lord Teverson

Information about the Committee

The reports and evidence of the Committee are published by and available from The Stationery Office. For information freely available on the web, our homepage is:

http://www.parliament.uk/parliamentary_committees/lords_eu_select_committee.cfm

There you will find many of our publications, along with press notices, details of membership and forthcoming meetings, and other information about the ongoing work of the Committee and its Sub-Committees, each of which has its own homepage.

General Information

General information about the House of Lords and its Committees, including guidance to witnesses, details of current inquiries and forthcoming meetings is on the internet at

http://www.parliament.uk/about_lords/about_lords.cfm

Contacts for the European Union Committee

Contact details for individual Sub-Committees are given on the website.

General correspondence should be addressed to the Clerk of the European Union Committee, Committee Office, House of Lords, London, SW1A 0PW

The telephone number for general enquiries is 020 7219 5791.

The Committee’s email address is euclords@parliament.uk

CONTENTS

	<i>Paragraph</i>	<i>Page</i>
FOREWORD—What this report is about		8
Chapter 1: Introduction	1	9
The subject of our inquiry	1	9
Box 1: Operation Dana		9
Conduct of the inquiry	5	10
Structure of this report	7	10
Chapter 2: The Evolving Constitution	9	11
The establishment of Europol	9	11
The disadvantages of a Convention	14	12
Box 2: Article 30 (2) of the Treaty on European Union		13
The Council Decision	18	14
What Lisbon might do	23	15
Box 3: TFEU Article 88		15
The Future Group	25	16
Box 4: Future Group: Extract from the Executive Summary		16
Interpol and SitCen	28	16
Box 5: Interpol		17
Chapter 3: Objectives and Structure	30	18
Objectives and competence	30	18
National units and liaison officers	42	20
Box 6: SOCA		20
Bypassing Europol	49	22
A question of trust	58	23
Our conclusions	62	24
Chapter 4: Working Methods	66	26
Intelligence-led policing	66	26
Box 7: Intelligence-led law enforcement: JHA Council		
Conclusions		27
The Organised Crime Threat Assessment	77	28
Information Exchange and Analysis	83	29
Europol Information System: current implementation	91	31
Analysis work files: current implementation	99	32
Figure 1: Analysis Work Files		33
Table 1: AWF Crime Areas		34
Joint investigation teams	109	35
Counter-terrorism	113	36
Box 8: Europol's role in counter-terrorism		36
Chapter 5: Governance and Accountability	124	39
Governance	124	39
The Chairmanship of the Management Board	128	40
Our conclusions and recommendations	134	41
The relationship between the Management Board and the Director	138	41
Our conclusions and recommendations	147	43
Budgetary issues	152	43

Table 2: United Kingdom Contribution to Europol		43
Accountability	156	44
Four-yearly reviews	161	45
Democratic accountability	168	46
Chapter 6: Relations with Partners	176	48
Eurojust	176	48
Box 9: Eurojust		48
Box 10: Cooperation between Europol and Eurojust		48
Co-location	183	49
Other EU agencies	188	50
Interpol	191	51
Third countries	193	51
Box 11: Operation Euro Tree		52
Chapter 7: Security	198	53
Enhanced security	198	53
Responsibility for security	200	53
Our conclusions and recommendations	212	55
Individual security	218	56
Chapter 8: Data Protection	222	57
Data Protection under the Europol Convention	223	57
Box 12: The ownership of data		58
Agreements with third states	227	58
Data Protection under the Decision	232	59
Box 13: Europol Decision, Commission proposal: Article 26		59
The Data Protection Officer	238	60
Chapter 9: Other Issues	240	61
Privileges and Immunities	240	61
Linguistic and legal difficulties	242	61
Box 14: Differences in national laws		62
Quality of officers seconded to Europol	251	63
The profile of Europol among United Kingdom police forces	255	63
The link with SOCA	256	64
Raising awareness	262	65
Chapter 10: Summary of Recommendations and Conclusions	264	66
Objectives and structure	264	66
Objectives and competence	264	66
National units and liaison officers	266	66
Bypassing Europol	267	66
Working methods	271	66
Intelligence-led policing	271	66
The Organised Crime Threat Assessment	272	67
Information exchange and analysis	274	67
Joint investigation teams	277	67
Counter-terrorism	278	67
Governance and accountability	281	68
The Chairmanship of the Management Board	281	68
The Relationship between the Management Board and the Director	284	68

Four-yearly reviews	289	68
Democratic accountability	292	69
Relations with partners	293	69
Security	294	69
Responsibility for security	294	69
Individual security	299	69
Data protection	300	69
Other issues	301	70
Privileges and immunities	301	70
Linguistic and legal difficulties	302	70
Quality of officers seconded to Europol	304	70
The profile of Europol among United Kingdom police forces	305	70
Conclusion	308	70
Appendix 1: Sub-Committee F (Home Affairs)		71
Appendix 2: Call for Evidence		72
Appendix 3: List of Witnesses		74
Appendix 4: List of Acronyms and Abbreviations		75
Appendix 5: List of Relevant Reports		78

Oral Evidence

<i>Mr Peter Storr, International Director, and Mr Ben Judah, Head of Police Cooperation and Crime Section, International Directorate, Home Office</i>		
Written evidence		1
Oral evidence, 21 May 2008		8
Supplementary evidence		22
<i>Mr William Hughes, Director General, and Mr Rob Wainwright, Deputy Director, Serious Organised Crime Agency (SOCA)</i>		
Written evidence		24
Oral evidence, 4 June 2008		27
Supplementary evidence		40
<i>Professor Juliet Lodge, Jean Monnet European Centre of Excellence, University of Leeds</i>		
Written evidence		43
Oral evidence, 18 June 2008		49
<i>Professor Didier Bigo, Visiting Professor of War Studies, King's College London</i>		
Written evidence		46
Oral evidence, 18 June 2008		49
<i>Mr Tim Wilson, Visiting Fellow, PEALS (Policy, Ethics and Life Sciences; a joint research institute of Newcastle and Durham Universities with the Centre for Life, Newcastle)</i>		
Written evidence		59
Oral evidence, 18 June 2008		63

<i>Professor Dr Monica G W den Boer, Faculty of Social Science, Department of Public Administration and Organisation Science, Vrije Universiteit (VU), Amsterdam, Faculty of Social Science, Department of Public Administration and Organisation Science, Vrije Universiteit (VU), Amsterdam</i>	
Written evidence	69
Oral evidence, 24 June 2008	71
<i>Mr Max-Peter Ratzel, Director of Europol</i>	
Written evidence by Europol	78
Oral evidence, 24 June 2008	101
Supplementary evidence	114
<i>Mr José Luis Lopes da Mota, President of Eurojust and national member for Portugal, Ms Michèle Coninsx, Vice-President of Eurojust, national member for Belgium and Chair of the Terrorism Team, Mr Aled Williams, national member for the UK and Chair of the Europol team at Eurojust, Mr Jacques Vos, Acting Administrative Director, Ms Frederica Curtol, Case Management Legal Analyst, and Ms Muriel van der Klooster, Assistant to the President, Eurojust</i>	
Oral evidence, 24 June 2008	115
Supplementary evidence	125
<i>Mrs Isabelle Pérignon, Head of Sector, Mr Fabio Marini, Deputy Head of Unit, Mr Dick Heimans, Head of Sector for Counter-terrorism, and Mrs Victoria Amici, Desk Officer in charge of Europol, European Commission</i>	
Oral evidence, 25 June 2008	128
Supplementary evidence	138
<i>Mr Agustín Díaz de Mera García Consuegra, MEP, Rapporteur on the Council Decision, European Parliament</i>	
Oral evidence, 25 June 2008	140
<i>Mr Robert Crepínko, Chairman, and Mr Alfredo Nunzi, Secretary, Europol Management Board</i>	
Oral evidence, 25 June 2008	144
<i>Professor Gilles de Kerchove, EU Counter-terrorism Coordinator</i>	
Oral evidence, 25 June 2008	151
<i>Sir Ronnie Flanagan, HM Chief Inspector of Constabulary, Chief Constable Ken Jones, President, Association of Chief Police Officers, Chief Constable Ian Johnston, Chief Constable of British Transport Police and Assistant Chief Constable Nick Gargan, Thames Valley Police</i>	
Written evidence by Association of Chief Police Officers (ACPO)	156
Oral evidence, 2 July 2008	157
<i>Mr David Smith, Deputy Information Commissioner and Mr Jonathan Bamford, Assistant Information Commissioner</i>	
Oral evidence, 9 July 2008	171
<i>Dr Nicholas Ridley, John Grieve Centre, London Metropolitan University</i>	
Oral evidence, 9 July 2008	179
Supplementary evidence	186

<i>Rt Hon Tony McNulty, a Member of the House of Commons, Minister of State, Home Office, and Mr Peter Storr, International Director, Home Office</i>	
Oral evidence, 16 July 2008	189

Written Evidence

Association of Chief Police Officers in Scotland (ACPOS)	200
HM Revenue & Customs	203
Home Office	
Letter from the Rt Hon Tony McNulty MP, Minister of State, to the Chairman of the Select Committee, 23 July 2007	206
Letter from the Chairman of the Select Committee to the Rt Hon Tony McNulty MP, Minister of State, 9 July 2008	207
Lancashire Constabulary	207
Letter from His Excellency Mr P.W. Waldeck, Ambassador of the Kingdom of the Netherlands to the United Kingdom, to the Chairman of Sub-Committee F	208

Note: References in the text of the Report are as follows:

- (Q) refers to a question in oral evidence
- (p) refers to a page of written evidence

FOREWORD—What this report is about

Europol, the European Police Office responsible for coordinating the fight against serious and organised crime, began operations from its headquarters in The Hague in 1999. In January 2010 it will become an agency of the EU. The Council Decision bringing about this change in its constitution has made some amendments to its objects, powers, working methods and governance. Many of these changes are beneficial, so far as they go; but they do not go very far, and we believe this represents a missed opportunity.

The *raison d'être* of Europol is the exchange of information for law enforcement purposes. It is a matter of particular concern that four fifths of the information exchanged by national liaison officers stationed at Europol is exchanged without actually going through Europol, and hence without being placed on Europol's database and without being accessible to Member States other than those directly involved. The reason is a lack of trust: a reluctance on the part of Member States, especially at the early stages of an investigation, to share sensitive information with all Member States through the Europol channels. One way of improving this would be for Member States to station at Europol only officers and officials with the highest necessary security clearance.

In addition to simply facilitating the exchange of factual information, Europol analyses information to help the investigation of particular categories of crime. This is one of Europol's success stories. Undertaking analysis of information is one of the differences between Europol and Interpol, a difference we explain more fully in Chapter 2.

The United Kingdom has been influential in persuading Europol to base its work on Organised Crime Threat Assessments: planning for future threats rather than reacting to past events. Much however remains to be done to persuade other Member States of the value of this, and of other modern policing methods.

The existing structure for the governance and management of Europol is complex and cumbersome. The new Decision might have improved this, basing itself on the structure of other EU agencies; but it does not. We are making a number of recommendations which, if implemented, would clarify the respective duties of the Director and Management Board, and would make it easier for them to work together. A particular aspect of this which we consider is the responsibility for security in the organisation.

In the United Kingdom the Serious Organised Crime Agency—SOCA—is the body responsible for liaison with Europol. This works well, but the same cannot at present be said for liaison between SOCA and the United Kingdom police forces which provide it with much of its information. We make recommendations for improvement.

Accountability of Europol to the European Parliament and national parliaments would improve if the Treaty of Lisbon came into force; but even without that Treaty, there is scope for improvement.

EUROPOL: coordinating the fight against serious and organised crime

CHAPTER 1: INTRODUCTION

The subject of our inquiry

1. Major criminals are no respecters of frontiers. They treat national borders as at worst an inconvenience, at best an opportunity to commit ever more sophisticated offences and to help in escaping detection, prosecution and conviction. For law enforcers matters are otherwise. Borders represent the operational limits of national units, and differences in operational methods. They throw up language barriers, and problems are caused by different legal systems, different laws and different prosecution processes. It is the task of Europol, the European Police Office, to ensure that, for law enforcers, the national borders of the Member States cause as little hindrance as possible to the fight against serious crime.
2. Contrary to popular misconception, Europol is not a European Police Force; the European Union does not have a police force, and is unlikely to have one in the foreseeable future. Law enforcement remains the responsibility of the Member States. What the EU does have in Europol is an organisation whose task is to help the police forces of the Member States to help each other. Here is one example from December 2007:

BOX 1

Operation Dana

An armed and violent Eastern European gang committed around twenty armed robberies against high quality jewellers in the United Kingdom; there were over 200 similar incidents across the EU. Europol and Eurojust coordinated an operation involving law enforcement authorities in Estonia, Finland and the United Kingdom. Officers from three United Kingdom police forces visited Estonia at the end of 2007. Eight addresses were searched, seven suspects were arrested, and many mobile phones and SIM cards were seized. As a result United Kingdom forces have identified offenders in 16 cases and have brought prosecutions in 11 of them.¹

3. This is our seventh inquiry into aspects of Europol, but our first for six years. In the years leading up to 1 July 1999, when Europol began operations, we conducted four inquiries. The first was a major inquiry into the draft of the Convention between the Member States on the establishing of a European Police Office.² This was followed by brief reports drawing attention to the proposed Confidentiality Regulations,³ to the draft rules of procedure of the Joint Supervisory Body⁴ and to the rules governing cooperation between

¹ Evidence of William Hughes, Director General of the Serious Organised Crime Agency (SOCA), Q 91, and Europol Annual Report for 2007, page 22.

² *Europol* (10th Report, Session 1994–95, HL Paper 51).

³ *Europol: Confidentiality Regulations* (1st Report, Session 1997–98, HL Paper 9).

⁴ *Europol: Joint Supervisory Body* (13th Report, Session 1997–98, HL Paper 71).

Europol and third countries.⁵ Additionally, our 1999 inquiry into computer systems in the field of Justice and Home Affairs considered, among other databases, the Europol Information System.⁶ In 2002, when Europol had been operational for three years, we conducted an inquiry into proposals by the Danish Presidency to extend its remit.⁷

4. Europol is currently a body established by a multilateral Convention between the Member States. On 20 December 2006 the Commission presented a proposal for a Council Decision converting Europol into an agency of the EU, funded from the Community budget. After much discussion and amendment, political agreement was reached on a text at the Justice and Home Affairs Council on 18 April 2008; the Decision is expected to be adopted later in November 2008 and will come into force on 1 January 2010.⁸ This is therefore a good time for us to consider what Europol has achieved under its current constitution, and how it might best progress in future.

Conduct of the inquiry

5. This inquiry has been conducted by Sub-Committee F, a list of whose members is set out in Appendix 1. They issued a call for written evidence in March 2008; this is reproduced in Appendix 2. In reply they received evidence from thirteen persons and bodies. Between May and July 2008 they heard oral evidence from thirty witnesses. They visited the headquarters of Europol and Eurojust in The Hague, and the following day held four evidence sessions in Brussels. The witnesses included representatives of the Commission, a Member of the European Parliament and the EU Counter-terrorism Coordinator. A full list of all the witnesses is in Appendix 3. To all those who helped in the arrangement of these visits, and to all the witnesses, we are most grateful.
6. Throughout the inquiry we have had as our specialist adviser Kevin O’Connell, a former Deputy Director of Europol. His unrivalled knowledge of the subject has been of the greatest assistance to us. We are very grateful for all his help.

Structure of this report

7. In the next chapter we look at the constitution of Europol as it has evolved, and at how it will shortly change. In Chapters 3 and 4 we examine the objectives, structure and working methods of Europol, and in Chapter 5 its governance and accountability. Chapter 6 considers its relations with its partners, and is followed by three chapters looking at security, data protection and a number of other issues. Finally in Chapter 10 we summarise our conclusions and recommendations.
8. **We recommend this report to the House for debate.**

⁵ *Europol: Third Country Rules* (29th Report, Session 1997–98, HL Paper 135).

⁶ *European Union Databases* (23rd report, Session 1998–99, HL Paper 120).

⁷ *Europol’s Role in Fighting Crime* (5th report, Session 2002–03, HL Paper 43)

⁸ In EU terminology the date of entry into force of the Decision (as of other legal instruments) is shortly after its publication in the Official Journal, whereas 1 January 2010 is the date from which it is applicable. Here and throughout this report we refer to 1 January 2010 as the date of entry into force, using the clearer terminology which applies to United Kingdom legislation, and indeed to international legal instruments like the Europol Convention and its Protocols.

CHAPTER 2: THE EVOLVING CONSTITUTION

The establishment of Europol

9. The first high level suggestion that the Member States of the European Union had a common interest in the fight against serious crime was an initiative of the German Chancellor Helmut Kohl at the Luxemburg European Council in June 1991. He suggested that one of the aims of the Inter-Governmental Conference in Maastricht in December that year should be to have Treaty commitments on the fight against drug trafficking and organised crime. The minutes record that “The European Council noted with interest the practical proposals submitted by the German delegation,⁹ which supplement the work already carried out in this area. The European Council agreed on the objectives underlying these proposals and instructed the Conference to examine them further with a view to revision of the Union Treaty”.
10. Under the heading DRUGS the minutes continue: “Regarding the fight against international drug trafficking and organized crime, the European Council has agreed on the objectives underlying the German delegation’s proposals ... and requests the Ministers with responsibility for drugs matters to submit proposals before the European Council’s next meeting in Maastricht.”
11. As a result, when the Maastricht Treaty was signed on 7 February 1992 it included in the new Title VI a provision, Article K1(9), that Member States should regard as a matter of common interest “police cooperation for the purposes of preventing and combating terrorism, unlawful drug trafficking and other serious forms of international crime, including if necessary certain aspects of customs cooperation, in connection with the organization of a Union-wide system for exchanging information within a European Police Office (Europol).”
12. This provision recorded the agreement of the—then twelve—Member States on the setting up of a European Police Office, but it was not a legal basis for establishing such an Office. Article K3(2) required the Council to draw up a Convention and recommend it to the Member States for adoption. The negotiations resulted in the signature on 26 July 1995 of a Convention on the Establishment of a European Police Office—the Europol Convention.¹⁰ This was a document which gave great prominence to easing the exchange of information and to the provision of analysis in support of criminal investigation. But by then there were fifteen Member States whose ratification of the Convention was needed before it could come into force. The ratifications were slow in coming and Belgium, the last State to ratify, did not do so until June 1998. In accordance with Article 45(3) of the Convention, it entered into force on 1 October 1998.¹¹ Europol began

⁹ The initiative is summarised as follows in the Council minutes: “Treaty commitment to full establishment of a Central European Criminal Investigation Office (“Europol”) for these areas by 31.12.1993 at the latest. Details to be laid down by unanimous decision of the Council. Gradual development of Europol functions: first of all relay station for exchange of information and experience (up to 31.12.1992), then in the second phase powers to act also within the Member States would be granted. Rights of initiative for the Commission and also for individual Member States.”

¹⁰ OJ C316 of 27.11.1995, p. 2.

¹¹ At the same time there entered into force a Protocol on the interpretation of the Convention by the Court of Justice, and a second Protocol on the privileges and immunities of Europol and its staff (Protocol of 24 July 1996 on the interpretation, by way of preliminary rulings, by the Court of Justice of the European Communities of the Convention on the establishment of a European Police Office (OJ C 299 of 9.10.1996, p. 2), and Protocol of 19 June 1997 on the privileges and immunities of Europol, the members of its organs, the deputy directors and employees of Europol (OJ C 221 of 19.7.1997, p. 2)).

operations from its headquarters in The Hague on 1 July 1999, at which point it also took over the work of a European Drugs Unit which since 1994 had been in operation without any formal constitution or powers.

13. The Convention is still the instrument governing the constitution of Europol and its work; but, as we record below, it has been significantly amended. In little more than a year it will be replaced by the Council Decision. In the course of this report we consider the changes which this will make to the constitution of Europol and to its work.

The disadvantages of a Convention

14. The Convention, like any other treaty, can only be amended either in accordance with its own provisions, or by another treaty, and therein has lain the problem. An Annex to the Convention contains a list of the crimes to which the Convention can apply, and definitions of them; and Article 43(3) allows the Council to amend them. There has been a Council Decision amending the definition of “traffic in human beings” to include child pornography.¹² However this is the only form of change which the Convention itself has allowed the Council to make. Other and more substantial changes have needed an amendment to the Convention by further Protocols, each of them, like the Convention, subject to ratification by all the Member States which were signatories.¹³
15. In November 2000 a Protocol was signed adding money-laundering to the list of crimes,¹⁴ and two years later a further Protocol was signed allowing Europol staff to participate in Joint Investigation Teams, something we consider in paragraphs 109 to 112.¹⁵ In July 2002 the Danish Presidency published proposals for a much more substantial Protocol,¹⁶ extending Europol’s remit, streamlining its methods of operation, and completely re-writing the nature of the crimes within Europol’s competence (and hence superseding the first of these Protocols). This third Protocol—the Danish Protocol—also gives Europol wider access to personal data, and facilitates data transfers to third countries. The Protocol was signed in November 2003,¹⁷ but over three more years were to elapse before any of these Protocols was ratified. It is hard to know why Member States troubled to

¹² Council Decision of 3 December 1998 supplementing the definition of the form of crime “traffic in human beings” of the Convention on the establishment of a European Police Office (Europol Convention) (OJ C 26 of 30.01.1999, p. 21).

¹³ For the accession to the Europol Convention of the 12 Member States which have joined the EU subsequently, no ratification has been necessary beyond that needed for the respective Treaties of Accession. The ten new Member States which acceded in May 2004 undertook in their Act of Accession to accede to the Europol Convention, and there was no further ratification requirement. Seven of those States acceded on 1 September 2004, Malta and Poland by the end of the year, and Estonia on 1 July 2005. Bulgaria and Romania acceded to the Europol Convention on 1 August 2007 in accordance with Article 3(3) of their Act of Accession and the Council Decision adopted under Article 3(4).

¹⁴ Protocol of 30 November 2000, drawn up on the basis of Article 43(1) of the Convention on the establishment of a European Police Office (Europol Convention) amending Article 2 and the Annex to that Convention (OJ C 358 of 13.12.2000, p. 2).

¹⁵ Protocol of 28 November 2002 amending the Convention on the establishment of a European Police Office (Europol Convention) and the Protocol on the privileges and immunities of Europol, the members of its organs, the deputy directors and the employees of Europol (OJ C 312 of 16.12.2002, p. 2).

¹⁶ OJ C 172 of 18.7.2002, p. 15.

¹⁷ Protocol of 27 November 2003, drawn up on the basis of Article 43(1) of the Convention on the Establishment of a European Police Office (Europol Convention), amending that Convention (OJ C 2 of 6.1.2004, p. 3).

ratify the first at all. However it duly came into force on 29 March 2007, to be superseded less than three weeks later when the 2003 Protocol came into force on 18 April 2007, nearly five years after the original Danish proposals.

16. These problems arose because, as we have explained in paragraph 11, at the time Europol was set up there was no Treaty base allowing it to be established otherwise than by a Convention between the Member States. No problem would have arisen after the entry into force on 1 May 1999 of the Treaty of Amsterdam, since this completely re-wrote Title VI of the Treaty on European Union, adding a new Article 30(2) which not merely allowed but required the Council to take major steps in the development of Europol, in particular to support investigation in “specific” cases.

BOX 2

Article 30 (2) of the Treaty on European Union

The Council shall promote cooperation through Europol and shall in particular, within a period of five years after the date of entry into force of the Treaty of Amsterdam:

- (a) enable Europol to facilitate and support the preparation, and to encourage the coordination and carrying out, of specific investigative actions by the competent authorities of the Member States, including operational actions of joint teams comprising representatives of Europol in a support capacity;
- (b) adopt measures allowing Europol to ask the competent authorities of the Member States to conduct and coordinate their investigations in specific cases and to develop specific expertise which may be put at the disposal of Member States to assist them in investigating cases of organised crime;
- (c) promote liaison arrangements between prosecuting/investigating officials specialising in the fight against organised crime in close cooperation with Europol;
- (d) establish a research, documentation and statistical network on cross-border crime.

17. Paragraph (c) of Article 30(2) is significant. This is the long-awaited coalescence of law enforcement and justice in the fight against serious crime, which ultimately led to the partnership with Eurojust which we describe in Chapter 6. The contrast between the creation of Europol and Eurojust is instructive. Although the idea of an EU judicial cooperation unit was first suggested by what is now the Article 36 Committee¹⁸ in 1996, it was only after the entry into force of the Treaty of Amsterdam that a decision was taken at the European Council at Tampere in 1999 to set up a body with the task of coordinating the activities of national prosecuting authorities and supporting criminal investigations in organised crime. Eurojust therefore could be, and was, set up by a Council Decision;¹⁹ this Decision could be amended by the Council in the same way, and indeed the budgetary provisions were amended barely a year later by a further Council Decision.²⁰ Eurojust has therefore suffered none of the problems of being established by a Convention which have afflicted Europol from the outset.

¹⁸ The Coordinating Committee of senior officials set up under Article 36 of the TEU to advise on Title VI matters (police and judicial cooperation in criminal matters), also known as CATS from its French acronym.

¹⁹ Council Decision 2002/187/JHA of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime (OJ L 63 of 6.3.2002, p. 1).

²⁰ Council Decision 2003/659/JHA of 18 June 2003 amending Decision 2002/187/JHA setting up Eurojust with a view to reinforcing the fight against serious crime (OJ L 245 of 29.9.2003, p. 44).

The Council Decision

18. In February 2006 the Austrian Presidency set up a “Friends of the Presidency” Group to discuss the future of Europol. When the Group reported in May 2006 it complained that because of Europol’s legal basis “changing provisions of even minor importance has proven to last five years and longer. Particularly in comparison to younger institutions like Eurojust or CEPOL this becomes an obvious and unnecessary disadvantage ... A delay of more than five years for putting a minor change to Europol’s mandate into effect is clearly not tolerable.”²¹ Of the 76 changes to Europol’s constitution and functions suggested by the Group, nearly half would have required amendment of the Convention.
19. This report was discussed on 1–2 June 2006 by the JHA Council, which concluded that work should begin on considering whether and how to replace the Europol Convention by a Council Decision. On 5 January 2007 the Commission brought out a Proposal for a Council Decision establishing the European Police Office.²² Negotiations on the proposal lasted a year, but a political agreement was reached on 18 April 2008. This Committee indicated to the Minister that his agreement on behalf of the United Kingdom need not be withheld despite the fact that the Decision was being kept under scrutiny during the currency of our inquiry. As we have said, the Decision is expected to be adopted later in November 2008 and will enter into force on 1 January 2010—two years after the date optimistically suggested by the Council in June 2006, but well before any amendment to the Convention would have had a chance of entering into force.
20. Peter Storr, the International Director at the Home Office who is also the United Kingdom member of the Article 36 Committee, told us that the United Kingdom was a member of the Friends of the Presidency Group, and thought that “the way in which Europol was originally structured was inflexible and rather bureaucratic. It meant that if there were new developments, new crime trends and new mandates for Europol, it became a rather cumbersome process for Europol to be able to change its priorities in order to take these on board.” The United Kingdom was “very supportive of the idea of changing the constitutional arrangements for Europol to the present Council Decision”. (Q 20)
21. Mr Storr added a note of caution. “I would not want to over-sell the Council Decision but the changes I think are changes in the right direction. They are modest changes and they reflect the fact that there are different approaches among Member States as to how Europol should be run and governed.” (Q 37) We think his caution is justified, since the changes are indeed modest—in our view, too modest. The transition from the Convention to the Decision was an opportunity for making important changes to the constitution and working of Europol. The changes that were made are for the most part in the right direction, but in this report we explain where we believe opportunities were missed.
22. Because amendment of a Decision is not subject to the legal formality of ratification, **we hope that those of our recommendations which require amendment of the Council Decision will meet with the approval of all the**

²¹ Document 9184/1/06 rev 1 of 19 May 2006.

²² Document 5055/07.

Member States, and can be made so that they enter into force, if not with the entry into force of the Decision on 1 January 2010, then soon after.

What Lisbon might do

23. One reason the Member States were anxious to adopt the Decision before the end of 2008 was that, when the Decision was agreed in April 2008, it was thought certain that the Treaty of Lisbon would be ratified and would come into force on 1 January 2009. The Council Decision is currently a third pillar instrument, adopted by unanimity of the Member States and requiring only consultation of the European Parliament. If the Decision had not been adopted by the end of this year, the merging of the first and third pillars meant that adoption of the Decision would have required co-decision of the Council and the Parliament. Although the Treaty of Lisbon does not include transitional provisions showing exactly what would happen to proposals made and agreed but not adopted before its entry into force, the involvement of the Parliament at that stage would certainly have delayed matters, and might have required amendment of the draft Decision.
24. The other consequence of the entry into force of the Lisbon Treaty would be the application of Article 88 of the Treaty on the Functioning of the European Union (TFEU). This Article reads:²³

BOX 3

TFEU Article 88

1. Europol's mission shall be to support and strengthen action by the Member States' police authorities and other law enforcement services and their mutual cooperation in preventing and combating serious crime affecting two or more Member States, terrorism and forms of crime which affect a common interest covered by a Union policy.

2. The European Parliament and the Council, by means of regulations adopted in accordance with the ordinary legislative procedure, shall determine Europol's structure, operation, field of action and tasks. These tasks may include:

- (a) the collection, storage, processing, analysis and exchange of information, in particular that forwarded by the authorities of the Member States or third countries or bodies;
- (b) the coordination, organisation and implementation of investigative and operational action carried out jointly with the Member States' competent authorities or in the context of joint investigative teams, where appropriate in liaison with Eurojust.

These regulations shall also lay down the procedures for scrutiny of Europol's activities by the European Parliament, together with national Parliaments.

3. Any operational action by Europol must be carried out in liaison and in agreement with the authorities of the Member State or States whose territory is concerned. The application of coercive measures shall be the exclusive responsibility of the competent national authorities

²³ The article was originally Article III-276 of the Constitution Treaty.

Thus the TFEU would give Europol a remit differently expressed and in some respects wider than the Decision. We consider Europol's mandate in detail in the following chapter. The TFEU would also introduce a provision on accountability to the European Parliament and national Parliaments, something we deal with in Chapter 5.

The Future Group

25. In January 2007, at the outset of the German Presidency, the German Minister of the Interior, Dr Wolfgang Schäuble, convened an informal JHA Council in Dresden. One of the purposes was “the creation of an informal Group at ministerial level with the objective to consider the future of the European area of justice, freedom and security”. The members of the Group, which became known as the Future Group, were ministers from what were then the two current trios of Presidencies (Germany, Portugal, Slovenia; France, Czech Republic, Sweden); a representative of the future Presidency trio (Spain, Belgium and Hungary); and an observer from the United Kingdom, representing the common law countries.
26. The Group reported in June 2008,²⁴ and a significant part of their report is devoted to Europol.²⁵ They summarised their conclusions on Europol as follows:

BOX 4

Future Group: Extract from the Executive Summary

Europol is to function as close partner and focal point for national police forces at the European level. Improving data transfers from Member States to Europol is necessary if it is to become a genuine information platform for Member States. The requirement of the so-called “Swedish” framework decision of 18 December 2006,²⁶ aiming at better information sharing, could be fulfilled by means of creating automatic data transfer instruments. Furthermore, Europol should be, within its legal framework, increasingly used and expanded into a competence centre for technical and coordinative support.

27. The proposals of the Future Group show that some of the Member States most supportive of Europol are themselves already considering amendments to the Decision. This confirms us in our view that it is realistic for us to make recommendations which, to be implemented, would also require amendment of the Decision.

Interpol and SitCen

28. We mentioned at the start of the report that Europol is sometimes assumed to be a European police force. It is also often confused in the mind of the public, and indeed in the mind of the police, with Interpol.

²⁴ Freedom, Security, Privacy—European Home Affairs in an open world—Report of the Informal High-Level Advisory Group on the Future of European Home Affairs Policy (“The Future Group”), Document 11657/08.

²⁵ Paragraphs 38–53.

²⁶ Council Framework Decision 2006/960/JHA of 18 December 2006 on simplifying the exchange of information and intelligence between law enforcement authorities of the Member States of the European Union, OJ L 386 of 29.12.2006, p. 89.

BOX 5**Interpol**

Interpol, based in Lyon, is a world-wide international police organisation divided into global regions, of which Europe is one. It was created in 1923, and now has 187 member countries. Interpol facilitates cross-border police cooperation, and supports and assists all organisations, authorities and services whose mission is to prevent or combat international crime. Interpol and Europol share an interest in categories of crime such as terrorism, drugs and organised crime, trafficking in human beings and financial and high-tech crime. In addition, Interpol supports law enforcement officials in the field with emergency support and operational activities, especially in its priority crime areas, pursuit of fugitives, and assuring public safety.

Interpol's databases include data on criminals such as names, fingerprints and DNA profiles, and stolen property such as passports, vehicles and works of art; this information relates to crimes which have already taken place, and the data are often placed on the databases as a result of legal proceedings which require the identification of criminals or the return of stolen property.

In the event of a disaster or major crime, Interpol can dispatch response teams of officers to the scene to help deal with the crisis. Major events support teams can also help member countries with the policing of high profile conferences or sporting events.²⁷ Europol has no equivalent power.

We discuss in Chapter 6 the relationship between Europol and Interpol.

29. The Council Decision setting up Europol is based on the third pillar of the Treaty on European Union (Justice and Home Affairs). Under the second pillar (Common Foreign and Security Policy) there is a Situation Centre (SitCen) which was established under the aegis of the Council Secretariat in Brussels to undertake a common assessment of particularly critical issues in relation to the Union's foreign policy. The European Council agreed that from January 2005 a counter-terrorism group should be established within SitCen. We explain in paragraph 122 why we believe that SitCen is better adapted than Europol to the exchange of intelligence between security agencies.²⁸

²⁷ In the context of its inquiry following the Madrid bombings of March 2004 the Committee took oral evidence from the Secretary General of Interpol, Mr Ron Noble, and at his invitation visited the Interpol headquarters in Lyon. For further information about Interpol see our report *After Madrid: the EU's response to terrorism* (5th Report, Session 2004–05, HL Paper 53), Chapter 6 and QQ 326–360.

²⁸ In the context of its inquiry following the Madrid bombings of March 2004 the Committee also visited Brussels and took oral evidence from the Director of SitCen: see our report *After Madrid: the EU's response to terrorism* (5th Report, Session 2004–05, HL Paper 53), Chapter 5 and QQ 148–189.

44. Mr Wainwright explained that within SOCA it was the International Department which was responsible not only for Europol but also for the other international channels of police cooperation in the United Kingdom. It was an integrated part of a bureau that also included Interpol, the European Arrest Warrant functions in the European Union, and a very large bilateral network of liaison officers around the world (some 140 in 40 countries). (Q 62) Liaison with Europol originally took place only through the national unit, but since the entry into force of the Danish Protocol Member States may allow direct contact between other “designated competent authorities” and Europol.³¹
45. The only disadvantage of having SOCA as the United Kingdom national unit is that it has no counter-terrorism remit.³² Sir Ronnie Flanagan, the Chief Inspector of Constabulary, told us: “... it is absolutely crucial that we in the UK have a one-stop shop. I cannot think of a better body or a more appropriate body than SOCA in that national sense. Undoubtedly, it does have shortcomings. SOCA, for example, has no remit in relation to counter-terrorism, so suddenly you find our Met colleagues, who have very much an international remit in that regard, deploy representatives to Europol quite outside SOCA ... They [the Met] have one [liaison officer] and have imminent plans for a second one to be embedded.” (QQ 379–380)
46. **While we accept that SOCA is best placed to act as the United Kingdom national unit, the fact that it has no counter-terrorism remit makes it all the more important that it should work very closely with the Metropolitan Police and other forces which do have such a remit.**
47. Each national unit is required to second at least one liaison officer to Europol, and these, having one foot in each of the Europol and national unit camps, are the main source of personal contact. The United Kingdom currently has eight staff at the Liaison Bureau representing SOCA, the Metropolitan Police, HM Revenue and Customs (HMRC) and the Scottish Crime and Drugs Enforcement Agency. The cost is in the region of £150,000 per annum per officer. Other large Member States have similar sized teams.
48. The Home Office saw the liaison bureau as an essential component of supporting Member States’ law enforcement activity, providing as it does a direct link between Europol and the Europol national unit in the home country. (p 3) SOCA was equally enthusiastic: “The unique value offered by the Europol network derives from the co-location of liaison officers from all 27 Member States in one centre, allowing in particular for operational coordination across multiple (i.e. more than two) borders. This works well for the UK in over 500 cases each year. Notable successes in recent years include the disruption of a criminal organisation involved in international drug trafficking and money laundering, operating across six countries, which led in February 2008 to the arrest in London of 22 suspects, the seizure of

³¹ Convention, Article 4; Decision, Article 8.

³² Sir Stephen Lander, the Chairman of SOCA, is a former Director-General of MI5, but this is coincidental. William Hughes, the Director-General of SOCA, is a former Director General of the National Crime Squad, while Rob Wainwright, the International Director of SOCA, was formerly Director of the International Division of the National Criminal Intelligence Service (NCIS).

the Member States' competent authorities so that the whole is greater than the sum of its parts. Limited sharing of information will not achieve a common approach to cross-border cooperation against serious crimes.

64. **The Home Office tell us that the United Kingdom is prepared to take a lead in improving the amount of material shared with Europol. (p 3) We look forward to hearing in the Government's response to this report precisely what steps they intend to take to bring this about.**
65. We consider in Chapter 7 how trust might be improved.

BOX 7**Intelligence-led law enforcement: JHA Council Conclusions**

The goal of setting up and implementing a widely used and common methodology for intelligence-led law enforcement at EU level must be further enhanced through concerted and co-ordinated action by all bodies and agencies of the European Union involved in these efforts, as well as the Member States, and must be sustained over a longer period of time. The Council notes and welcomes the Commission's intention to bring forward proposals, prepared in co-operation with the relevant bodies and agencies, as well as the Member States, for further action in this area during 2006.

71. Mr Storr's view was that the concept of intelligence-led policing was now established, but "very much work in progress"; and he conceded that in many Member States it was still "slightly counter-cultural". (Q 10) The Commission were less sanguine, believing—in our view justifiably—that intelligence-led policing had been adopted in only some Member States, and that many Member States were unenthusiastic. The Commission working paper on criminal intelligence-led law enforcement, which the Council expected to be brought forward in 2006, has been delayed, possibly to 2009, and the Commission thought it "premature to work on these issues". (QQ 254–255)
72. We were told by Home Office officials that when the Council Multidisciplinary Group (MDG) on Organised Crime was looking for a new topic for its next round of Member State mutual evaluations the United Kingdom was keen to have intelligence-led policing as the subject. This would have resulted in the collection of clearer information about the extent to which this had been adopted by each Member State. However the suggestion was dismissed because there was no agreed definition of the concept.
73. There seems to us to be a considerable element of circularity involved. In October 2005 Ministers from all the Member States committed themselves to setting up a "common methodology for intelligence-led law enforcement". Presumably they, or at least their officials, understood the meaning of the methodology to which they were committing their law enforcement authorities. Three years later those officials say that they cannot tell whether this result has been achieved, or even to what extent the concept has been adopted, because, in effect, they do not understand what it is they are supposed to be achieving.
74. We share the Commission's doubts as to whether the concept of intelligence-led policing is as well established in the Member States as Mr Storr suggests. We agree with Sir Ronnie Flanagan that such changes require an "unrelenting focus" if they are to be accepted. (Q 364)
75. The Friends of the Presidency Report recommended that Europol and the Heads of Europol National Units (HENU) should draw up an inventory of the methods, skills, and knowledge required for successfully implementing intelligence-led policing. This in their view would result in recommendations on intelligence-led policing for Europol and the Member States. They thought that Europol and CEPOL (the European Police College) should organise training on the subject.³⁸

³⁸ Option 40.

- their data. These restrictions could be applied retrospectively, and were not limited merely to those to which the data were subject in the Member States.
87. There have been major technological advances since the establishment of Europol, and a doubling in the number of Member States, but this does not excuse the poor delegation of powers in the arena of the computerised system of collected information. From the moment that the Member States decided that they needed the Europol network, the Council should have delegated powers to manage the whole system effectively.
88. We found ourselves wondering whether some Member States have any real interest in what Europol does, or in coordinating the necessary support for Europol. The overall picture we gained, in particular from the evidence of the Commission, was that some Member States have lost the view of what they want Europol to do in terms of information management. Europol is acting in accordance with its best endeavours, but having to make its own rules almost as it goes along. Dick Heimans, a former Europol official who is now Head of Sector for Counter-terrorism at the Commission, thought this painted an excessively bleak picture. He conceded that there would be difficulties in managing an organisation where the main power rested with the Council, working through a Management Board consisting of 27 different Member States which all had individual interests, individual systems of criminal law, individual relations between prosecutors and law enforcement personnel, and different relationships between law enforcement agencies and intelligence agencies. However he thought they were “doing a fairly good job of it”. (QQ 264–266) **We continue to doubt whether all Member States have the necessary commitment to the exchange of information which is Europol’s core function.**
89. The problem of coordination is one that has been identified in other parts of the EU structure. Professor Gilles de Kerchove, the EU Counter-terrorism Coordinator, told us: “... by attending meetings of the LIBE Committee of the European Parliament ... I have had the feeling that Members of the European Parliament do not see the overall picture where the European Union wants to go and where it will stop creating different legislation on data collection and data sharing ... [the Council] did not provide the Parliament with a strong vision of where it wanted to go and where it wanted to stop ... That is why ... I strongly recommended ... the setting up of one single working group within the Council to look at all aspects of the problem.”(Q 358) In reply to our question about segmented development of information systems relating to criminality, Mr Storr said (Q 58): “Frankly, I think if we were starting now with a blank piece of paper, we would not design the systems in quite the way in which they have been designed or developed. As with many things within the European Union, life is not perfect”—a masterly understatement.
90. In the Council Decision, nearly all traces of the tight network for trustful collaboration between competent authorities have been lost. So too has the principle of a single computerised system with a narrow focus of operations. This appears to be simply an acceptance of today’s reality, where the EIS and OASIS (AWF) programmes have been implemented independently of one another. Some Member States seem uncertain about the purpose and usefulness of loading data into the information system automatically, a development which occurred during the implementation of the current system. The OASIS programme has created large databases not originally

bureaucracy and they now cover a number of investigations associated with the same theme. In 2006 AWFs covered the following categories of crime (referred to by Europol as “crime areas”):

TABLE 1
AWF Crime Areas

Crime area	Number of operational projects
Drug trafficking	3
Crimes against persons	3
Financial and property crime	4
Organised crime groups	4
Terrorism	2
Forgery of money	2
Total	18

103. Only two files on financial and property crime were operational in 2007, but four are now again operative. Mr Ratzel gave us more details: “... we have two Analysis Work Files dealing with terrorism issues ... one dealing with money laundering ... another one dealing with counterfeiting of products and the counterfeiting of money, mainly counterfeiting of euros but also of the British pound ... another dealing with trafficking in human beings, another one dealing with illegal migration and another dealing with eastern European organised criminals.”(Q 167)
104. The United Kingdom is a member of 16 AWFs and currently applying to join another.⁵¹ HM Revenue and Customs gave us examples of two AWFs in which they participate. Their main area of work with Europol is AWF Smoke, dealing with tobacco fraud. Prior to the secondment of an HMRC officer to Europol in June 2006, HMRC were contributing to AWF Smoke only on a sporadic basis. Since then the United Kingdom has consistently been in the top three, and in the last quarter of 2007 was the largest contributor of tobacco fraud intelligence in Europe with 36 out of 135 contributions. The second AWF, MTIC (Missing Trader Intra Community), opened on 2 April 2008 and is a United Kingdom lead initiative to combat abuse of the tax system by organised criminal groups. The aim is to provide a European platform for collating and analysing data from Member States’ MTIC investigations.
105. Every new AWF must have a link to the Organised Crime Threat Assessment, otherwise it would not be a priority for the Member States. Member States are not obliged to participate in all AWFs; it is up to individual Member States to declare that they are ready and willing to do so. They may not wish to participate in an AWF which specifically concerns only a few Member States, but in fact the majority would like to participate in as many as possible. (Q 176)

⁵¹ AWF Copy, dealing with product piracy ranging from designer clothes to counterfeit medicines and aircraft parts. The United Kingdom’s application was accepted on 15 September 2008.

115. In September 2005 the Council adopted a Decision⁵⁶ which obliges Member States to provide Europol with comprehensive information relating to investigations in terrorist cases involving two or more Member States. But when we took evidence from Professor de Kerchove he told us: “Europol it seems (and they have confirmed that) does not get systematic information on terrorist cases ... they have identified for the first three months of 2008 six cases, ten per cent of what they have received, where Member States should have sent information. After having asked the Member States to provide information, out of the six cases they received three answers. Out of the other three cases, in two they did not get any information and they got one refusal, based on the fact that it was not police information but linked to an intelligence operation. That means that there is room for improvement for sure”. (Q 352)
116. The 2005 Council Decision was thus adopted under the United Kingdom Presidency, two months after the 7/7 bomb attacks. It states in a recital that it is “without prejudice to essential national security interests, and it should not jeopardise the safety of individuals or the success of a current investigation or specific intelligence activities in the field of State security.” This, presumably, is the basis on which Member States believe they can decline to comply with it. But we believe that where the Governments of the Member States have unanimously adopted legislation requiring their security services to pass intelligence information to Europol, that is what should be done.
117. **The Government must make sure that United Kingdom agencies comply with the 2005 Council Decision on the supply to Europol of information relating to terrorism investigations, subject always to the qualification protecting essential national security interests. We recommend that the Government should persuade other Member States to do likewise.**
118. Professor de Kerchove also pointed out to us that Europol had suggested that the 2005 Council Decision should be amended to delete the requirement of Article 2(3) that at least two Member States must be involved in a terrorist act for that Decision to apply; he explained that when you start an investigation you do not always know if another Member State is involved. (Q 353) He thought, and we agree, that **the Council should consider amending the 2005 Decision to remove this constraint.** However we appreciate that nothing in the Decision prevents a Member State from providing Europol with information even if no other Member State is involved, and we understand that the United Kingdom already does so.
119. Currently Europol is run by the police for the police. In at least some of the larger Member States prevention of terrorism is dealt with, not only by the police, but primarily by the intelligence services through other channels, usually highly confidential bilateral channels. This is the case with the United Kingdom: as we have explained, our national unit is SOCA, which is not responsible for counter-terrorism. They told us that “currently the UK’s CT liaison post is provided through the posting of a Metropolitan Police Counter Terrorism Command (SO15) officer to the UK Liaison Bureau. He oversees the flow of a significant amount of information to Europol from ongoing UK

⁵⁶ Council Decision 2005/671/JHA of 20 September 2005 on the exchange of information and cooperation concerning terrorist offences, OJ L 253 of 29.9.05, p. 22.

investigations and operations and other sources ... an increasing amount of operational data is also provided by the recently established regional CT Units, most significantly the Greater Manchester Police CTU.”(p 26)

120. We asked Professor de Kerchove whether in his view there should be a more direct link into Europol from Member States’ intelligence agencies. He replied that at the time of 9/11 he had suggested creating at Europol a counter-terrorist task force where Member States could send intelligence and security agents. However the suggestion was not well received. “The intelligence community is not very eager to work with Europol. They could [do so] ... ‘competent authorities’ may provide information to Europol. Nowhere is it said that it is only the police as such.⁵⁷ The security services, MI5 or the DST in France, could be considered as competent authorities and provide information to Europol. I think in the long run it will happen. I am optimistic on that one, but it will take a lot of time.”(Q 357)
121. For as long as communication between a Member State and Europol could only take place through a single national unit, there was no scope for a direct link with intelligence agencies. But since the entry into force of the Danish Protocol in April 2007 there is a provision, which will be carried over into the Decision, allowing Member States to authorise direct contacts between designated competent authorities and Europol. It is thus open to the United Kingdom to designate MI5 as an authority which can have direct bilateral contacts with Europol. Other Member States could of course do likewise. This would implement Professor de Kerchove’s suggestion.
122. We are however mindful of the distinction between sending information on counter-terrorism to Europol for law enforcement purposes, and the exchange of intelligence. We suspect that the reasons for the intelligence community’s reluctance to work with Europol are twofold: the low level of security clearance of many Europol officials, and the fact that intelligence is already exchanged through SitCen, the EU Joint Situation Centre.⁵⁸
123. **We believe the Government should treat with caution any proposal that direct exchanges of intelligence between the security services of the United Kingdom and those of other Member States should take place through Europol.**

⁵⁷ In both the Convention (as amended by the Danish Protocol) and the Decision “competent authorities” are defined as “all public bodies existing in the Member States which are responsible under national law for preventing and combating criminal offences”.

⁵⁸ See paragraph 29 for a fuller explanation of SitCen.

draftsman, this seems to be how it is interpreted, and a number of witnesses regretted this.

140. Mr Storr felt that the Management Board was becoming “a little bit bogged down in the sort of day-to-day detail which in a police force within this country you would expect the chief officer of police to undertake without reference ... I would hope that the Board would not get so far down into the weeds as seriously to interfere with the ability of the Director to run an efficient organisation.”(QQ 20, 42–43) Both of the SOCA witnesses made the same point, Mr Wainwright concluding that “[the Director] should be allowed to run his organisation as a Chief Executive Officer, running the day-to-day administration of his resources and of the conduct of the operation which Europol are supporting. The Management Board ... should not be concerned with the day-to-day running of the organisation but very much with the strategy of Europol, its external relationships, and ensuring budgetary probity and efficiency.”(QQ 98–100) And Mr McNulty agreed: “There should be the time, space and discretion for the Director to get on with the job.”(Q 490)
141. Victoria Amici, for the Commission, explained that “what the Commission has proposed in its original proposal to bring Europol into the fold of the EU agencies, is precisely to give it a structure which is similar to that of other agencies ... where at least the respective roles of Management Board and Director are more clearly defined ... the Management Board should be responsible for the strategic direction of the organisation, for setting objectives and monitoring their implementation, for monitoring progress and keeping an eye on the operation of the Director, whilst the Director should be concerned with the day-to-day management and with delivering the objectives that are set to him.”(Q 267)
142. We do not ourselves see that this would necessarily have followed from the Commission proposal. However the negotiations have resulted in the draft Decision giving the Management Board a new first task: to “adopt a strategy for Europol, which includes benchmarks to measure whether the objectives set have been reached”. We believe this is a welcome addition, since it makes clear that the Board’s primary duty is strategic.
143. A less welcome change is a new provision in the Decision that a duty of the Director is “supporting the Chairperson of the Management Board in the preparation of Management Board meetings”. This might allow a strong Director with a compliant Chairman to control strategy as well. The Director already has a voice (though not a vote) on the Management Board; that should be enough.
144. The support for the Chairman should come from a Secretariat which, though inevitably it will be staffed by Europol employees under the control of the Director, must have a sufficient degree of independence to allow it to carry out the requirement of the Decision that it should be “closely and continually involved in organising, coordinating and ensuring the coherence of the Management Board’s work”. Mr Crepinko thought that the workload of the Secretariat was already very high, but under the new Decision would be even higher. (Q 309) If he is right, the Secretariat will need to be larger than it currently is. Mr McNulty however told us that the Secretariat had not been expanded, precisely so that they would leave the Director to get on with the job. (Q 490)

171. Article 85 of the TFEU has a similar but not identical provision for Eurojust. It reads: “These regulations shall also determine arrangements for involving the European Parliament and national Parliaments in the evaluation of Eurojust’s activities.” In the case of Eurojust the national parliaments are placed on a more equal footing with the European Parliament, and are “involved in the evaluation” of Eurojust’s activities, as opposed to “scrutinising” Europol’s. There are differences in other language texts. A deliberately different text normally suggests that a different meaning is intended, but it is not clear what that difference might be in practice.
172. What seems clear is that in the case of Europol it was to have been for the European Parliament to take the initiative. What remains unclear is whether, in the absence of a formal legal base, there will be any part for the European Parliament and national parliaments to play. Clearly there is no way in which the Parliament and Council can adopt a Regulation to lay down the procedures; but we see no reason why the Parliament should not adopt its own procedures, and invite national parliaments to play a role.
173. In our last report on Europol,⁶⁴ looking at the proposals of the Danish Presidency which were the basis of the Danish Protocol, we noted that in February 2002 the Commission had published a Communication on *Democratic Control over Europol*⁶⁵ which proposed a joint committee of the European Parliament and national parliaments meeting twice a year to scrutinise the work of Europol. The Danish Presidency adopted this suggestion in the first draft of the Protocol, but it was withdrawn from subsequent drafts. We thought this a pity, and recommended that the Government should press for the idea of a joint committee to be reinstated.⁶⁶ We do not repeat that recommendation today; a committee which might have been merely cumbersome when there were only 15 Member States would surely be almost unworkable with 27.
174. **It must be for the European Parliament to decide whether it wishes to adopt, in the spirit of the Treaty of Lisbon, a formal procedure for the scrutiny of Europol’s activities, and whether, and if so how, to involve the national parliaments of the Member States. We hope however that the Parliament will give this serious consideration.**
175. The change in Europol’s status which will be brought about in 2010 will not of course in any way affect the ability of this Parliament, through its Select Committees, to continue to hold the Government to account for their part in the activities of Europol.

⁶⁴ *Europol’s Role in Fighting Crime* (5th report, Session 2002–03, HL Paper 43)

⁶⁵ COM(2002)95 final.

⁶⁶ Report, paragraph 40.

BOX 11**Operation Euro Tree⁷²**

Europol successfully supported the Spanish and Colombian authorities and the US Secret Service in a joint police action against a Colombian criminal network producing and distributing counterfeit euros and US\$ Dollars. In the final stage 10 house searches took place simultaneously in Bogotá. Specialists from Europol's forgery of money unit provided analytical and technical support to the investigators from the beginning of the operation. Nine persons were arrested and the following amounts of counterfeit currency were seized (face value):

- 400,000 counterfeit euro (50 and 100 denomination)
- 1 million counterfeit US\$ (20 and 100 denomination)
- 4.4 million counterfeit US\$ in preparation
- 550 million counterfeit Colombian Pesos
- 63 million Venezuelan Bolivar (to be used as raw material)
- 533 Colombian lottery tickets.

All technical equipment required for the production of the counterfeit notes was seized. This was the largest criminal organisation involved in the production and trafficking of counterfeit US\$, euros, and Colombian pesos. During this eight month investigation the different techniques used by the counterfeiters were identified, as well as the routes used to distribute in Europe, the United States, Panama, Costa Rica, Venezuela and Ecuador.

195. In August this year there was another spectacular operation in Bogotá, when as a result of cooperation between Spain and Colombia, organised by Europol, counterfeit Euro notes to a record value of €11 million were seized. The equipment used to make the notes was also seized, and arrests made.⁷³
196. There was a divergence of views between the Home Office and SOCA on the value of these agreements. Mr Storr said: "As far as wider partnerships are concerned, we are fully behind Europol's efforts to establish working relationships with third countries outside the European Union, with European and other bodies involved in law enforcement. We think that partnership approach is very much the way to go."(Q 20)
197. SOCA pointed out the limitations following from the data protection requirements. It did not challenge the need for these, but complained that "many of these agreements are restricted to 'strategic' matters only and have delivered little by way of tangible benefits. The experience suggests Europol should spend less time pursuing such external agreements and focus on delivering its goals within the EU."(p 25) In oral evidence Mr Wainwright told us that the amount of legal and political effort needed to get such strategic agreements signed was such that very often the dividend that followed was not great; "the cooperation agreements that Europol has with Russia, for example, and other countries is limited to the exchange of strategic information only, threat assessment papers and so on, which sometimes is helpful but has a natural limit in terms of how useful it can be."(Q 93)

⁷² Europol Annual Report for 2007, p 25.

⁷³ Europol press notice of 29 August 2008.

203. Mr Ratzel further explained to us that “If the Security Coordinator decides that something is wrong with security within Europol he informs me and advises me what to do. If I do not follow the advice, if I am not able to follow it, if I am not willing to follow it or if I am not successful in following it, this person informs the Management Board what was the advice, what has been done by the Director and what nevertheless has not been achieved so far. That gives you a clear indication of the strong role of the security coordinator.”
204. From this evidence it seemed that the Security Coordinator was not responsible to the Director for security matters, and indeed for some purposes bypassed him and went straight to the Management Board. We thought it inconceivable that the Director should not have overall responsibility for security; moreover it seemed to follow unequivocally from the words of Article 4(2) of the Council Act that he should have this responsibility: “The Security Coordinator shall be directly answerable to the Director of Europol”.
205. Accordingly, after we had completed taking evidence we asked Europol officials to clarify the situation. They submitted to us a supplementary memorandum, specifically approved by the Director (p 78). From this it seems that, despite the wording of Article 4(2) of the Council Act, when acting as chairman of the Security Committee the Security Coordinator is indeed “independent from the Director’s governance and tasking”. The memorandum explains that the Security Committee “can thus be considered as a sub-committee of the Management Board” and that “it is thus self-evident that the chairman of a sub-committee of the Management Board acts independently from the Director of Europol.”
206. Nor is that all. Mr Ratzel also told us that there was an additional internal unit dedicated to dealing with security for data protection, data security and confidentiality, “and at the same time this unit serves the security coordinator as a secretariat in his role of having the Security Committee guided ... In addition, we have a security officer in the organisation who is in charge of looking for security issues every day in practical terms and also, as far as necessary, of dealing with internal inquiries. These internal inquiries are then done under my command.” The head of the unit was thus also in charge of data protection, data security and confidentiality, and was at the same time the data protection officer of the organisation. However as data protection officer he was not under the Director’s command, but nevertheless had direct access to him and advised him what to do on data protection issues.
207. We asked Mr Ratzel how much of a worry security was to him on a scale of one to ten, “one” meaning that he did not worry about it at all. His reply was “close to two”. (QQ 169–170) We do not suggest that he was not concerned about security; we hope he is, for in our view a lack of concern about security rapidly breeds complacency. An organisation which is not proactive about security is one which puts itself at risk of security breaches; good security is a matter of constant vigilance.
208. Nevertheless we think there are a number of reasons why Mr Ratzel should be worried. It seems to us that the mechanisms set up for handling security issues are extraordinarily and unnecessarily complex—so complex that the Director’s oral evidence to us needed considerable clarification. We can well understand that the Management Board, which has oversight of the proper

expression which caused problems, the confusion here being between effectiveness and efficiency. (QQ 172, 180)

244. Ultimately of course the purpose of both Europol and Eurojust, if crimes are not prevented, is to bring the criminals to court for trial, conviction and sentence. Here additional confusion is caused by the differences between the legal systems involved, and in particular by the differences between the prosecuting authorities and the procedures involved. In England and Wales the system is adversarial: the evidence is handed by the police to the Crown Prosecution Service, who decide whether a prosecution is justified and, if they conclude that it is, undertake it. France and most (but by no means all) countries governed by the Napoleonic Code use the inquisitorial system.
245. This causes great problems to Europol, and perhaps even more to Eurojust, which has to deal not just with national members seconded by each of the 27 Member States, but with 30 different legal systems. The members can be prosecutors, judges or police officers, depending on their legal system. Mr Lopes da Mota explained: “Sometimes we use the same words but with different meanings. Take, for instance, the word ‘prosecutor’. What is a prosecutor? We cannot define exactly because it is a different concept for example for the Portuguese or the Spanish or the French systems.”(Q 216) And Assistant Chief Constable Gargan told us that he had personal experience of working with the French, and when a British investigator made a request their language was not understood by the French examining magistrate, not because of any linguistic difficulty, but because of very different operating systems in the two countries. (Q 375)
246. Mr Lopes da Mota gave us an example of problems that can be caused by even minor differences in national laws. (Q 217)

BOX 14

Differences in national laws

A crucial document was needed to be used as evidence in a trial in Portugal. The document was in another country, so a letter rogatory was sent. The document was obtained in the context of a home search that took place during the night in accordance with the legislation of the requested state, and sent to Portugal. However Portuguese law provides that in that type of crime it is not permissible to make such searches between midnight and six in the morning, so the document could not be used at the trial and the defendant could not be convicted.

247. Professor Bigo pointed out that “people jump from their preliminary logic, the one they have in mind in their national country as if the others have the same, and it is especially the case when we discuss [the differences] between accusatory and inquisitorial procedures.” He thought the key element was legal certainty. (Q 123) Professor Lodge agreed. She explained that in the case of automated information exchange relying on a tight definition of a particular term, a lack of precision in understanding a term might mean that an item would not be properly indexed, so that an investigating officer trying to find out about the existence of a file might not be able to do so. (Q 114) We would add that, even if the item has been properly indexed, an investigating officer might not be able to find it if he was searching for the wrong term.

- **Combating Terrorism**
 - the extent to which Member States' law enforcement agencies are involved in Europol's counter-terrorism tasks, including the Europol National Unit (ENU);
- **Europol's Information Exchange Network**
 - the use that is being made by Member States' law enforcement authorities of the Europol Information System;
- **Europol's Information Exchange with Third Parties**
 - the extent to which information is exchanged by Europol with third countries with which it has cooperation agreements;
- **Governance and Methodologies**
 - the extent to which Europol's objectives and governance structure are open to wide interpretation;
 - the value attributed by Member States and other customers to the OCTA, TSR, AWF and other products and services offered by Europol;
 - the inspection mechanisms used by the Joint Supervisory Body on data protection for ensuring quality of data and lawful use of data;
 - Definition of analysis in the Europol framework;
- how the provisions of the Council Decision amend the current rules and have the potential to change all of these matters.

FSJ	Freedom, Security and Justice—establishing an area of FSJ is the objective of Title VI of the TEU (The Commission Directorate-General dealing with FSJ matters is called Justice, Freedom and Security)
HENU	Head of Europol National Unit
HMRC	Her Majesty's Revenue and Customs
ICT	Information & Communications Technology
ILO	International Liaison Officer
ILP	Intelligence-led policing
IMT	Information Management and Technology
InfoEx	Europol secure information exchange tool
IS	Information System (see also EIS)
JHA	Justice and Home Affairs
JIT	Joint Investigation Team
JSB	Joint Supervisory Board
LB	Liaison Bureau
LEA	Law Enforcement Authority
LIBE Committee	Committee on Civil Liberties, Justice and Home Affairs of the European Parliament
Lisbon	See 'Treaty of Lisbon'
MB	Management Board
MDG	Multidisciplinary Group
MI5	The Security Service
MS	Member State
MTIC	Missing Trader Intra Community
NATO	North Atlantic Treaty Organisation
NCIS	National Criminal Intelligence Service
NIM	National Intelligence Model
OASIS	Overall Analysis System for Intelligence and Support
OC	Organised Crime
OCTA	Organised Crime Threat Assessment
OLAF	European Anti-Fraud Office
PCTF	Police Chiefs Task Force
PNR	Passenger Name Record
QMV	Qualified Majority Voting
SitCen	EU Joint Situation Centre
SIENA	Secure Information Exchange Network Application
SIS	Schengen Information System

SIS II	Second generation Schengen Information System
SOCA	Serious Organised Crime Agency
STR	Suspicious transaction report
TEC	Treaty establishing the European Community
TEU	Treaty on European Union
TE-SAT	Terrorism Situation and Trend Report
TFEU	Treaty on the Functioning of the European Union
Treaty of Lisbon	The Treaty between the Member States, signed in Lisbon on 13 December 2007, amending the TEU, and amending the TEC and re-naming it the TFEU
UNODC	United Nations Office on Drugs and Crime
WP	Work Programme

