European Police Office, Europol: protocol to the Convention, money laundering. Initiative Denmark

2002/0814(CNS) - 27/11/2003 - Final act

PURPOSE : to adopt the Protocol amending the Europol convention. LEGISLATIVE ACT : Council Act drawing up, on the basis of Article 43(1) of the Convention on the Establishment of a European Police Office (Europol Convention), a Protocol amending that Convention. CONTENT : pursuant to Article 30 (2) of the Treaty on European Union, within a period of five years after the entry into force of the Treaty of Amsterdam on 1 May 1999, the Council is to promote cooperation in a number of different areas, inter alia, through Europol. The Tampere European Council in October 1999 stated that Europol has a key role with respect to cooperation between Member States' authorities in the field of cross-border crime investigation in supporting Union-wide crime prevention, analyses and investigation. The European Council called on the Council to provide Europol with the necessary support. It has been decided to adopt the attached Protocol amending the Convention on the Establishment of a European Police Office (Europol Convention), signed by the representatives of the governments of the Member States. It should be added that the Council agrees that the instruction of Europol to deal with "fraud" as one of the forms of crime referred to in the Annex to the Europol Convention confers, as far as tax fraud and customs fraud is concerned, competences to Europol only in the field of improvement of the effectiveness and cooperation of the competent authorities of the Member States responsible for the functioning of the criminal law enforcement system and not their authorities responsible for ensuring the levying of taxes and customs duties. The objective of Europol shall be, within the framework of police cooperation between the Member States pursuant to the Treaty on European Union, to improve, by means of the measures referred to in this Convention, the effectiveness and cooperation of the competent authorities in the Member States in preventing and combating serious international crime where there are factual indications or reasonable grounds for believing that an organised criminal structure is involved and two or more Member States are affected in such a way as to require a common approach by the Member States owing to the scale, significance and consequences of the offences concerned. For the purpose of this Convention the following forms of crime shall be considered as serious international crime: crimes committed or likely to be committed in the course of terrorist activities against life, limb, personal freedom or property, unlawful drug trafficking, illegal money-laundering activities, trafficking in nuclear and radioactive substances, illegal immigrant smuggling, trade in human beings, motor vehicle crime and the forms of crime listed in the Annex or specific manifestations thereof. On a proposal from the Management Board, the Council shall unanimously lay down the priorities for Europol in respect of the combating and prevention of the forms of serious international crime within its mandate. Europol's competence as regards a form of crime or specific manifestations thereof shall cover related criminal offences. It shall, however, not cover offences predicate to illegal money-laundering activities with regard to which forms of crime Europol has no competence. The following shall be regarded as related and shall be taken into account: - criminal offences committed in order to procure the means for perpetrating acts within Europol's sphere of competence, - criminal offences committed in order to facilitate or carry out acts within Europol's sphere of competence, - criminal offences committed to ensure the impunity of acts within Europol's sphere of competence. The Protocol stipulates that Europol may, in addition, in accordance with the staffing and budgetary resources at its disposal and within the limits set by the Management Board, assist Member States through advice and research in particular in the following areas: - training of members of their competent authorities; - organisation and equipment of those authorities through facilitating the provision of technical support between the Member States; - crime prevention methods; - technical and forensic police methods and investigative procedures. Moreover, the Protocol also states that the national unit shall be the only liaison body between Europol and the competent national authorities. However, Member States may allow direct contacts between designated competent authorities and Europol subject to

conditions determined by the Member State in question, including prior involvement of the national unit. The national unit shall at the same time receive from Europol any information exchanged in the course of direct contacts between Europol and designated competent authorities. Relationships between the national unit and the competent authorities shall be governed by national law, and, in particular, the relevant national constitutional requirements. As regards information processing by Europol, in support of the execution of its tasks, Europol may also process data for the purpose of determining whether such data are relevant for its tasks, and can be included in the computerised system of collected information. The Contracting Parties meeting within the Council, acting with a two-thirds majority, shall determine conditions related to the processing of such data, in particular with respect to the access and usage of the data, as well as time limits for the storage and deletion of the data that may not exceed 6 months. The Management Board shall prepare the decision of the Contracting Parties and consult the joint supervisory body. National units, liaison officers and the Director, Deputy Directors or duly empowered Europol officials shall have the right to input data directly into the information system and retrieve them therefrom. In addition to the national units and persons, competent authorities designated to this effect by the Member States may also query the Europol information system. However, the result of the query will only indicate whether the requested data is available in the Europol information system. Further information may then be obtained via the Europol national unit. Information concerning the designated competent authorities, including subsequent modifications, shall be transmitted to the General Secretariat of the Council. On the issue of order opening a data file, this Protocol states that for every computerised data file containing personal data operated by Europol for the purpose of performing its tasks, Europol shall specify in an order opening the file: the file name; the purpose of the file; the groups of persons on whom dataare stored; the nature of the data to be stored; the type of personal data used to open the file; the supply or input of the data to be stored; the conditions under which the personal data stored in the file may be communicated, to which recipients and under what procedure; the time limits for examining the data and the duration of storage and the method of establishing the audit log. The Management Board and the joint supervisory body shall immediately be advised by the Director of Europol of the order opening the file and shall receive the dossier. The joint supervisory body may address any comments it deems necessary to the Management Board. The Director of Europol may request the joint supervisory body to do this within a certain period of time. At any time the Management Board may instruct the Director of Europol to amend an opening order or close the file. The Management Board shall decide on what date any such amendment or closure will have effect. The data file may not be retained for a period of more than 3 years. Before the 3-year period has expired, however, Europol shall review the need for the continuation of the file. When it is strictly necessary for the purpose of the file, the Director of Europol may order the continuation of the file for a new period of 3 years. Concerning the right of access to Europol documents, on the basis of a proposal by the Director of Europol, the Management Board, acting by a majority of two thirds of its members, shall adopt rules for access to Europol documents for any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, taking account of the principles and limits stated in the regulation of the European Parliament and of the Council regarding public access to European Parliament, Council and Commission documents adopted on the basis of Article 255 of the Treaty establishing the European Community. ENTRY INTO FORCE : the Protocol has to be ratified by all of the Member States before it can enter into force.