

## United Kingdom

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The *ad hoc* meetings are providing an opportunity to obtain a consensus on the issues that will compose the Draft Statute on which the U.N. General Assembly will vote and on which it is likely that the ICC may be based.

## **B. United Kingdom: Report on the Draft Europol Convention by the House of Lords**

by André Klip<sup>1)</sup>

On May 1, 1995 the Select Committee on the European Communities of the House of Lords presented their report on Europol.<sup>1)</sup> During their enquiry the Select Committee invited various witnesses to give evidence and received written evidence from a number of organizations. The report now published contains the October 1994 Draft Convention on Europol.<sup>2)</sup> This is the first time that a draft on this convention is made public officially. The explanatory note of the Home Secretary draws the attention to, what seems to be, a remarkable difference of opinion between two Member States on the legal character of the Joint Action concerning the Europol Drugs Unit.<sup>3)</sup> The British Home Secretary stated in his Explanatory Note on Work Carried out under Title VI of the Treaty European Union (published as Appendix 6 of the Report) that the Joint Action does not have the status of a legal binding international instrument. On the other hand in a letter of February 27, 1995 to both Houses of Parliament, the Ministers of Justice and Interior of the Netherlands referred to the Joint Action as a binding instrument.<sup>4)</sup>

In the report the Select Committee express their opinion on the draft Convention of which we will quote the conclusions and the recommendations:

"Establishment of an effective Europol would lead to important benefits to the public. But given the dangers to individuals there must be effective remedies and Europol must be accountable for its policies and actions.

It is unsatisfactory that the Europol Drugs Unit has been permitted to begin and extend its activities without legally binding agreement on the regulatory framework.

National parliaments if they are to be responsible for democratic supervision of measures under the Justice and Home Affairs pillar must be able to consider drafts when they can make a constructive input rather than when they can only reject or endorse the measure.

We welcome limitation of the tasks of Europol to the exchange, collection, analysis and provision of information and intelligence as well as support for national criminal investigations. Operational powers for Europol may never be appropriate. The problem of securing witnesses and evidence for criminal proceedings in other Member States should be taken up urgently under Justice and Home Affairs pillars procedures.

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<sup>1)</sup> Dr. André Klip is a lecturer of Utrecht University, The Netherlands.

<sup>2)</sup> See House of Lords, Session 1994-95, 10th Report, Select Committee on European Communities, Europol with Evidence (HL Paper 51).

<sup>3)</sup> See for a description, 2 INT'L ENFORCEMENT LAW REP. 1995, p. 64-66..

<sup>4)</sup> See for the Joint Action on Europol, 5 INT'L ENFORCEMENT LAW REP. 1995, p. 178-179.

<sup>5)</sup> See Parliamentary Documents I/II, 1994-1995, 23490 nrs. 87a and 22.



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Provided that the remit of Europol is extended in a controlled way, we are content with the list of crimes for which it would have competence. Inclusion of terrorism two years after entry into force of the Convention will allow Europol to build up skills and facilities in less controversial areas.

It is important for building confidence and protecting sensitive data that police access to the inner analysis files should be rigorously controlled. The structure of the organization must however enable police authorities to obtain speedy access to material to which they are entitled.

We welcome the provision that no Member State will have access to data held by Europol until its national legislation giving effect to the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data is in force. Europol must be legally bound by the appropriate obligations in the Council of Europe Convention. Member States should also be required to give effect to all the provisions in the Council of Europe Recommendation regulating the use of Personal Data in the Police Sector. Liaison officers must be adequately trained in data protection, and we recommend consideration of Data Protection Officers as a requirement for police authorities in all Member States.

The data subject's rights of access to information held on him is a key provision, and the exceptions to it should be more narrowly drawn. The data subject should be entitled to direct access on either to the national authority or to Europol.

Provided that adequate rules are drawn up by the Council, we think that the Convention places reasonable limits on exchange of data by Europol with third parties such as non-Member States and Interpol.

We strongly support the requirement for designation of national supervisory bodies to monitor data exchange with Europol and examine whether rights of the data subject are violated. We also support establishment of a joint supervisory body formed from representatives of national bodies. The data subject should be entitled to have recourse to either the national body or the joint supervisory body. Both national bodies and the joint supervisory body must have more effective enforcement powers.

Accountability of Europol for its policies and methods of operation will be important in building public confidence. Information should be provided on Europol successes to the extent possible without prejudice to sources. The draft Convention provides a reasonable basis for informing and consulting the European Parliament. Considerations of costs and effectiveness should determine the choice of body to audit Europol's accounts.

Both the national authority and Europol should be made liable in national courts under national law for any unauthorized or incorrect processing of personal data and required to pay compensation for any fault established.

For each convention under the Justice and Home Affairs pillar it must be considered whether to confer jurisdiction on the European Court of Justice. The individual should normally seek redress in national courts. It is however important that the Convention should be applied on a uniform basis in all Member States. Reference should be possible to the European Court where disputes arise on interpretation or application of the Convention, and it should be possible for proceedings to be brought against a Member State for breach of the Convention. As a fall-back we recommend that similar jurisdiction should be given to a separate tribunal. We are opposed to any compromise which would leave the European Court with uneven jurisdiction in regard to the Member States.

## RECOMMENDATION

The Committee believes that the Europol Convention raises important matters of policy and principle to which the attention of the House should be drawn, and they make this Report to the House for debate."