

1998-2016

LOOKING **BACK** MOVING *FORWARD*

ONE HUNDRED MEETINGS OF THE
EUROPOL MANAGEMENT BOARD

A modern, multi-story building with a grey facade and large windows. The word "EUROPOL" is visible on the building's facade.

EUROPOL



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ONE HUNDRED MEETINGS OF THE
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Foreword

Dimitris Avramopoulos

*European Commissioner for Migration,
Home Affairs and Citizenship*

We live in challenging times. Europe faces several new and complex security threats, which are becoming more varied and more transnational in nature. Terrorists are determined to destabilise our societies. They attack core European values in the name of distorted and violent ideologies.

Criminal networks are increasingly multifaceted, flexible and mobile. They operate across borders, exploiting any opportunity for profit, while harming our citizens and economy.

Criminals and terrorists increasingly move to cyberspace to commit crimes, recruit followers and spread propaganda messages. They abuse technology and devise increasingly sophisticated ways to act and elude investigations.

Europol's role is central. It is a trusted partner with unique coordination capabilities against crime, including an information system with a growing data set, top analysts, and a strong data protection and data security regime.

The European Counter Terrorism Centre we set up at Europol is central to our work against terror. As a centre of expertise, it focuses on tackling



foreign fighters, sharing intelligence and expertise on terrorism financing, online terrorist propaganda, and firearms trafficking. The Centre has already demonstrated its operational added value by providing immediate analytical and operational support to the Member States hit by the major terrorist attacks. I will continue to support the further strengthening of the Centre as a hub of information and expertise at European level.

The same applies for Europol's Cybercrime Centre, which opened new and effective avenues of cooperation between law enforcement authorities and the private sector, fulfilling its mission of providing analytical support, identifying top-level criminals and rescuing children from abuse.

For all these years, the Management Board has ensured the stability and strategic direction of the agency. I am grateful to its current and former members for their commitment to the mission of Europol.

A handwritten signature in black ink, appearing to be 'D. Avramopoulos', with a large, stylized flourish at the end.

DIMITRIS AVRAMOPOULOS

Foreword

Rob Wainwright
Director of Europol



In different ways Europol and its Management Board have consumed a large part of my career. I am certainly familiar with the Board's work. As a policy advisor and then head of delegation, as Chairman of the Board in 2005 and, for the last 7 years, as the Director of Europol, I have attended over three quarters of its 100 meetings to date. That makes me still a junior by some people's standards, but with enough experience, I hope, to offer a valid contribution to this publication.

I have seen the work and profile of the Management Board change over the years, especially in the period since Europol has become an EU agency. With the increasing influence over the agency's work of the European Commission and European Parliament, for example, the Board now operates within a broader and more complex governance structure. This will develop further when Europol's new Regulation is implemented through the modalities of new instruments such as the Joint Parliamentary Scrutiny Group and the acquiring of new data supervisory powers by the European Data Protection Supervisor.

Undeniably, however, the Management Board remains Europol's primary governance instrument and its most important stakeholder environment. That is so because some things certainly have not changed about Europol over its lifetime. The core work and functions of the organisation remain rooted in serving directly the policing and security interests of Member States. Given that these relate often to sensitive operational matters and even touch on areas of national security in many cases, it is critical to the credibility and continued success of Europol that it is supervised directly by representatives drawn from those national communities. This primary requirement in the purpose and constitution of

the Management Board will not change and, indeed, has been further reinforced by the text of the new Regulation.

During a period of considerable strategic change for Europol, therefore, as it adopts a new legal framework and operates within a more complex and challenging security environment, the continuity of purpose and experience offered by the Management Board is invaluable. Its recent handling of Europol's response to migration and terrorism is a case in point. Those twin seismic security issues that delivered a profound shock to the EU in 2015 and 2016 brought unprecedented new demands on Europol. The agency's unique information exchange and operational platform, which today connects over 650 law enforcement agencies in Europe and beyond, was judged by ministers to be an essential means by which the EU could deliver a more effective response to the security challenges involved. So, in quick succession, a European Counter Terrorism Centre and European Migrant Smuggling Centre were launched at Europol in early 2016, each combining the agency's traditional capabilities of operational analysis and key areas of expertise with innovative new instruments, for example in the monitoring and removing of terrorist content online. These were ambitious, even ground-breaking, initiatives in the Justice and Home Affairs domain of the EU. But their remarkably quick design and implementation could not have been possible without the ability of the Management Board to absorb and understand the strategic implications of the proposals and to make the right decisions at the right time. It had the capacity to do so because of the operational and leadership experience of its members and an institutional capacity that has developed over more than 18 years.

Today, more than ever, therefore, the Management Board provides Europol with governance stability and continuity. As the new Europol Regulation is implemented those qualities will ensure a smooth transition from one legal regime to the next, the development of rules and practices to ensure maximum exploitation of new capabilities to collect and process information, and the adoption of dozens of other decisions to safeguard the interests of Europol and its members. But it will also have to adapt to sharing more governance responsibilities with other EU institutional actors, especially in the fields of data protection and international cooperation. The latter is likely to become increasingly important for Europol. As more responsibility is thrust on the agency

to make a telling contribution to the fight against terrorism and people smuggling, for example, the intrinsic value of cooperating with Turkey and countries of the MENA region is obvious. In designing the most effective means to secure such practical cooperation Europol will have to show more flexibility and speed in concluding arrangements than its legal framework has allowed in the past. To a certain extent the European External Action Service and the European Commission will be in the driving seat but it is only the Management Board that will have the exclusive interests of Europol in mind and it should not be slow to uphold them even within the context of a more complicated governance space.

Similarly, I expect the Board to help guide Europol towards a more productive set of relationships with the private sector, under the terms of new opportunities established in the Regulation. In combating cybercrime, an area in which Europol has established such a strong presence in recent years, the role of industry has become critical to achieving any reasonable measure of success. But until now, partnership arrangements have been ad hoc, uneven and sub-optimal. They need to be fundamentally remodelled around the unique arrangements offered at Europol.

Europol is a special organisation. Its purpose and capabilities have grown rapidly over the last two decades in the face of ever-increasing transnational security threats to the EU and following the steady accumulation of experience and respect in the European law enforcement community. Today, it is one of the most influential security actors in Europe. The Director of Europol is its chief executive, legal representative and public face. But its authority, credibility and power as an organisation reside in the function and performance of the Management Board. Over 100 meetings, it has led and nurtured Europol through various successful stages of growth and development. I am sure it will have the same impact over the next 100.

A handwritten signature in blue ink, appearing to read 'Rob Wainwright', with a stylized flourish at the end.

ROB WAINWRIGHT

Introduction

Arie IJzerman

Chairperson of the Management Board



Timing is a key element in life and it is a blessing to be in the right place at the right time. As the representative of Europol's host State, I have the fortunate opportunity to be chairing the Management Board at the time of its 100th meeting.

The relationship between the Netherlands and Europol has grown stronger over the years thanks to the shared interest in cooperation, mutual understanding and positive attitude. Most Board meetings have been held at the headquarters and I am pleased to see that The Hague has become a friendly place for many colleagues.

Since its inception, the Management Board has had the challenging task of ensuring that the requirements of national law enforcement agencies receive the expected support from Europol. Equally challenging, the Board members have taken up the responsibility to ensure that Europol has been recognised by the respective national professional communities.

Confidence-building has been, and continues to be, an important element of the Management Board's responsibilities as confidence is an essential requisite of international cooperation, particularly in the law enforcement and security environment.

Throughout its meetings the Management Board has handled different topics starting with those concerning the establishment and setting up of Europol, moving on to those concerning its development, which culminated in the transformation into an Agency of the European Union.

This publication briefly illustrates the wide panoply of matters discussed by the Board members since the first meetings in 1998. Through this excursus it is possible to find evidence of how Europol, and the European Union, have changed over the years. The change has been quantitative, thanks to the enlargement process, but most of all qualitative, as witnessed by the continuing demand for Europol's products and services.

I submit that the growing trust placed in Europol by the Member States and other partners is also a reflection of the commitment and good governance maintained by the Management Board and its members. The Board now has the duty to ensure the good work also during the present and future challenging times when the Member States and the EU as a whole will be facing highly dangerous threats.

As Chairperson, I am pleased to present this publication and I wish to thank the contributors for their input and the Management Board Secretariat for its continued, excellent work in support of the Management Board, including on this occasion.

A handwritten signature in blue ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

ARIE IJERMAN

The beginnings of the Management Board

The debate concerning the establishment of a European police organisation unfolded in parallel with initial steps towards the free movement of persons, goods, capitals and services within the then European Community.

Informal police cooperation was already taking place at European Community-level since the 1970s in the TREVI group set up by interior and justice ministers, which constituted a preliminary move crucial to the later proposals for a European criminal intelligence agency. The initial focus of TREVI was international terrorism, however, the need to establish compensatory measures as the European internal market developed soon widened its attention to other areas of cross-border crime.

At the meeting held on 28-29 June 1991, the European Council agreed to a “Treaty commitment to full establishment of a Central Euro-

pean Criminal Investigation Office (‘Europol’) for these areas — fight against international drug trafficking and organized crime — 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. Right of initiative for the Commission and also for individual Member States.”⁽¹⁾

A few months later, the “European Council agreed on the creation of a European police office (Europol) the initial function of which would be to organize the exchange of information on narcotic drugs at the level of the Community’s 12 Member States. The European

⁽¹⁾ Presidency conclusions, European Council; Luxembourg, 28 and 29 June 1991 (SN 151/3/91, Annex I, A.2).

Council instructed the TREVI Ministers, in collaboration with the Commission, to take such measures as were needed to allow Europol to be set up at an early date.”⁽²⁾

This was the background to the notion enshrined in the Treaty on the European Union of 7 February 1992 by which the then 12 Member States agreed to consider as matters 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 organisation of a Union-wide system for exchanging information within a European Police Office (Europol).’

The Europol Drugs Unit (EDU) started operating in January 1994 with the mandate to assist national police forces in criminal investigations. Relying upon a small staff and one or two liaison officers from each Member State, the EDU supported a growing number of operations and its mandate expanded to include other areas of transnational crime and terrorism.

The EDU was headed by a management team consisting of a Coordinator, two Assistant Coordinators and two other members. The management team was responsible for the day-to-day operation of the EDU and was appointed by the Council, which exercised general oversight over its activities.

The Convention establishing Europol under Article K3 of the Maastricht Treaty was agreed in 1995 and, after ratification by the Member States, came into force on 1 October 1998. The Europol Management Board (MB) held its first meeting on the very day the Convention entered into force with Mr Karl Ruso (Austria) serving as its Chairman.

The Austrian Presidency convened three more meetings between October and November 1998 during which the MB considered a number of draft legal acts required for Europol to take up its activities under the Convention. The draft legislation covered such issues as staff and financial regulations, the pension fund, the security manual, the rules applicable to analysis files or those concerning the external relations of Europol, as well as several other rules and regulations typical of a start-up phase.

In its initial meetings — especially in November 1998 — the MB dealt with key aspects of corporate affairs, such as the interaction with the European Union (EU) institutions, particularly third pillar fora and the Committee on Civil Liberties and Internal Affairs of the European Parliament, the first strategic plan for Europol (1999-2003) and the accompanying 5-year financing plan, the work programme and budget for 1999 or the structure and composition of the future directorate and other Europol organs and bodies (Financial Committee, Financial Controller, Personnel Expert).

There was widespread acknowledgement of the excellent work carried out by the EDU management team, which provided the nec-

⁽²⁾ Presidency conclusions, European Council; Maastricht, 9 and 10 December 1991 (SN 271/1/91).



*European Council meeting in
Luxembourg on 28-29 June 1991*

essary ground for the agreement reached by the Justice and Home Affairs (JHA) Council on 3 December 1998 regarding the directorate.

The Management Board also had to deal with substantive operational matters early on and on 2-3 November 1998 discussed a feasibility study on the role of Europol in preventing and combating money counterfeiting, as well as a draft Council Decision on terrorism and another concerning the definition of trafficking in human beings in the Annex to the Europol Convention.

The Board's working procedures, its *interna corporis*, had also been a matter of attention since the very beginning. The records show regular discussions about the structure of the meeting agenda, the preparation and circulation of background documents, the interpretation of the rules of procedure and — on the occasion of the last meeting held during the

Austrian Presidency — an intensive calendar of work was presented by the incoming Chairman, Mr Günther Krause, who announced six meetings during the German Presidency in the first semester 1999, which were eventually reduced to four.

The language regime was also an issue the MB had to handle to ensure the availability of legal texts in all official languages and that language did not become a matter of concern in recruitment procedures for Europol staff. During one of the initial MB meetings, Europol advised that the first recruitment for 19 posts had attracted 397 applications of which only 95 could be accepted, mostly due to the fact that several had been drafted in the applicant's mother tongue with no mention of his/her language skills.

The MB regularly reviewed the status of national ratification of the Convention and related legislation, a process which was yet to be

completed by 8 June 1999. As a matter of fact, the minutes of the last MB meeting chaired by Mr Krause read: 'The Chairman concluded that it seems very likely that Europol will take up its activities under the Convention by 1 July 1999.'

An early vision of Europol

Further to laying down the foundations of Europol during the start-up phase, the Management Board triggered the debate about the perspectives of Europol in terms of planning and strategy with a view to facilitating its mission of providing assistance to national law enforcement agencies.

The outcome of discussions concerning the 'vision' of Europol, which culminated in the Paris meeting held on 4-5 December 2000, was that, in order to provide added value to the action of the Member States' competent authorities, Europol should employ efficiently its resources and staff, while respecting the priorities laid down by the JHA Council.

The main objective was to enhance the efficiency, quality and services of Europol. Other objectives were to create more transparency in respect of management and institutional arrangements between the Management Board, the Director and other bodies.

The 'vision' identified as the main goal to be achieved in the coming years, the improvement of Europol's action by simplifying its management and by making the relations between the various organs and participants clearer.

The Board set the framework for Europol according to priorities, tasks and objectives, which were identified as providing support to Member States' investigations and the development of analysis directly connected to their operational objectives.

The 'vision' relied on an assessment of Europol's activities based on a query list submitted to the Member States with the aim of describing the 'Europol realities' after a year of functioning under the Convention.

The Management Board noted as satisfactory elements the general situation reports and the strategic reports and considered that the information exchange via Europol and the liaison officers was good. On the other hand, the core element to be improved was considered to be the information analysis and processing in respect of the operational support to Member States.

The Management Board also found that the tasks falling directly within the scope of the Europol national units (ENUs) were carried out in a satisfactory way, but underlined the limited usage by the law enforcement agencies of the Europol channels. Around half of the heads of Europol national units (HENUs) estimated that national operational services were reluctant to share information with Europol, particularly for the analytical work.

Another interesting assessment concerned the general knowledge by national law enforcement agencies about the services offered by Europol. Nonetheless, their assessment of the



The old Europol headquarters (above), The Hague (1998-2011) and the new headquarters (left), The Hague (since 2011)

activities in the relevant areas of crime was still not satisfactory. The original competencies — drug trafficking, trafficking in stolen vehicles — remained the most popular. However, for the areas where Europol worked within its specific competencies, Member States were satisfied with the quality of the services offered.

With the exception of drugs trafficking, a majority of Member States did not see Europol yet as a significant tool to reduce crime. This conclusion was explicit through the feedback concerning the operational support by Europol.

The Management Board considered that this assessment highlighted an important point: information constituted the core of the activity of

Europol and Member States should commit to support Europol through the transmission of information and the active participation in its operational analysis.

Concerning Europol's mandate, the Management Board suggested that the organisation should concentrate its activities on the 'serious forms of international crime' by bringing its support to the law enforcement services of Member States without having investigative powers.

The Management Board stressed that terrorism was a priority for both the Member States and Europol and, in view of the results of the query list, confirmed a number of specific priorities, namely drugs, money laundering, illegal

immigration, counterfeiting of money and forgery of other means of payment, and trafficking in human beings.

The Board considered that before assigning new competences to Europol, the Director and the Europol national units should evaluate efficiency in the mandated areas, but also the consequences of the new tasks on the activities of the organisation. The Management Board found it useful to study an extension of Europol's competencies, but stressed that the development of the mandate would not automatically lead to an increase in its tasks.

The priority task of Europol was the exchange of intelligence and information to support operational requirements and precedence had to be given to the development of operational analysis. The exchange of information should be supported through the development and implementation of the Europol Computer System (TECS), as a wholly integrated information system was considered of primary importance.

TECS was seen as a tool to facilitate operational analysis for which Europol was meant to be the main source at EU level, while Member States should supply, in accordance with the Europol Convention, all the information necessary for the fulfilment of its tasks.

A key role to strengthen the bond between Europol and the competent authorities was assigned to the Europol national units, which should implement active procedures for collecting information. The liaison officers, based at the headquarters in The Hague and acting as

a continuation of the Europol national units, were asked to participate more in operational activities.

The Management Board emphasised that operational information was the highest priority for Europol and Member States should reinforce it by identifying the constraints for an effective support to the agency's operational work and by supplying strategic information in matters concerning the fight against crime.

Consideration was also given to the functioning of Europol and the Management Board found that the level of control was adequate, although it could occasionally affect the operational processing of intelligence and information.

The reconciliation between the intergovernmental nature of Europol and the EU framework was to be sought through a coherent policy and the Management Board proposed to hold regular meetings between its Chairman, the Chairman of the working group Europol, the Chairman of the HENUs and the Europol Director in order to ensure consistency of the different fora.

The Board invited Europol to forward the recommendations resulting from expert meetings to the HENUs in order to obtain their opinion, which was to be submitted to the Management Board. The Board also invited the HENUs to fully use their competencies in accordance with the Convention and ensured that it would give due consideration to their advice.

In respect of external relations, the Board asked Europol to study the possible use of the services of Member States' liaison officers in third states as it was not considered necessary to send Europol's own liaison officers abroad with the exception of Interpol. Initially, the Management Board considered that the secondment of third states' liaison officers to Europol should only be allowed insofar as it provided an added value to existing relations with the country concerned, something which rapidly proved to be the case.

The Management Board was also of the opinion that an agreement with Interpol and the World Customs Organisation was of the highest priority and that a working relationship between Europol and Eurojust should be established following the establishment of the latter.

The 'vision' addressed specific recommendations to the Member States concerning the need to supply Europol with any information and data necessary to carry out its activities. The implementation of TECS implied that all the Europol national units were to be ready to interface with the central system in order to

supply data from their respective law enforcement agencies.

Member States were also asked to assist Europol in avoiding any duplication of efforts in its relations with institutions and bodies of the European Union or other international organisations and to continue their efforts to inform the competent authorities of the products and services offered by Europol.

The 'vision' of Europol prepared by the Management Board clearly shows that, from the beginning, the priority was to provide law enforcement agencies with assistance in the fight against the most serious forms of cross-border crime. In order to enable this, the Management Board considered it necessary to concentrate means and resources on a selected number of priorities aiming at obtaining operational results. Furthermore, the Board was keen on ensuring a permanent process of quality control and full implementation of the Europol Convention by transmitting to Europol the information to accomplish its activities. Eventually, the vision became the basis for the internal prioritisation of tasks and objectives, which facilitated the further development of Europol.

The early days of data processing: the Europol Computer System (TECS)

Developing the legal, operational, technical, procedural and financial aspects of an information processing system was one of the very first tasks faced by the Management Board in 1998 and continued over the initial years of Europol.

Under the Convention, the main tasks of Europol were to facilitate the exchange of information with and among the Member States; to obtain, collate and analyse information and intelligence; to aid investigations in the Member States by forwarding all relevant information to the national units; and to maintain a computerised system of collected data provided by Member States.

The Europol Computer System (TECS) was foreseen in the Europol Convention, which tasked Europol with the establishment and maintenance of a computerised system of collected information to allow the input, access and analysis of data. TECS comprised three main components:

- an information system;
- an analysis system;
- an index system.

The first component became the Europol Information System (EIS), which was developed as Europol's central criminal information and intelligence database, covering all Europol's mandated crime areas. The second component was initially developed as the Overall Analysis System for Intelligence and Support (OASIS), which later became the Europol Analysis System (EAS), the operational information system hosting data contributed by Europol's stakeholders.

By the end of 1998, it had also become clear that to carry out its activities effectively and in compliance with legal requirements, Europol needed a secure and reliable telecommunication infrastructure providing links with all Member States. The debate on the requirements and costs for such a system was protracted and in early 2000 the Management Board adopted a telecommunication infrastructure strategy, which eventually led to the Europol secure information exchange tool (InfoEx), the forerunner of the current Secure Information Exchange Network Application (SIENA).



Jürgen Storbeck

EDU Coordinator, 1994-1999, and Europol Director, 1999-2004

... on Europol's first years

The Management Board started its work on 1 October 1998, in essence 9 months before Europol was authorised to act as a fully fledged European law enforcement office. The initial mandate of the Management Board was to offer support and to provide a control mechanism ensuring the smooth beginning of the institution.

But the Europol story began some years earlier on a number of different fronts: with proposals and consultations in the TREVI working groups; the planning of a Europol project team functional as from September 1992, in Strasbourg; and, of course, the establishment of the Europol Drugs Unit which began its operations in January 1994 in The Hague.

From the beginning, Europol was faced with a number of challenges, one of which was the unstable situation in the Balkans and the related spread of drugs trafficking, illegal immigration and other forms of organised crime from this region. In addition, the rapid evolution of information and communication technology presented both threats and opportunities. Preparations were also being made for the further enlargement of the EU. Police cooperation in Europe was in a time of change as a result of decisions made under the Maastricht and the Amsterdam Treaties and by the Tampere Council, all of

which the organisation had to implement. As a result, there was an urgent need for a permanent involvement of the Member States in the development of Europol, not only from the 'customers' perspective but also as architects and managers/overseers of the organisation.

However, especially in the beginning, the roles of 'who does what' and 'where the extent of the decision-making responsibility lay' were not completely clear. This, despite the stipulations of the Europol Convention, can be attributed to the fact that the decision making process had to be shared between the Europol Directorate, the HENUs, the MB and the JHA authorities. In addition, other control bodies such as the financial controller and the data protection authorities had to be integrated into the process.

Europol had to fulfil its tasks within a climate of high expectations from the European law enforcement community as well as that of governments and media. Europol had to achieve this, while at the same time, developing its capabilities to address future requirements.

Already in the first 2 years of operations, Europol had made the transition from an information centre to a more operational organisation. New staff were hired for intelligence and specialist knowledge;

activities were initiated in the newly mandated areas of crime; and preparations were made to enhance cooperation with third countries and organisations.

In December 2000, the Member States, through the Management Board, identified information exchange and operational analysis as Europol's core activity areas with the associated developmental priorities. From 2001, priority was given to terrorism — due to the 9/11 attacks, and to the forgery of money — due to the introduction of the euro. Additional staff had to be recruited and experts were seconded by the Member States. Efforts in developing new technologies and working methods were increased in order to provide tailored intelligence, analysis and other operational support. The successful development of the Europol Information System and the establishment of the secure telecommunication network linking Europol with the Europol national units of the Member States were cornerstones in this development of international law enforcement cooperation.

These are the historical facts of the organisation. However, success in building such an organisation is never solely down to 'hard' facts. An organisation such as Europol is made up of people with diverse political, professional and personal interests, human and cultural differences, which brings with it many strengths but also some weaknesses. Nonetheless, personal efforts, team work, partnership, competence and a common goal 'to contribute effectively to the defeat of criminality in Europe' far outweighed any petty jealousies and frustrations encountered in the achievement of such a goal.

The initial proposal to establish Europol as a type of European FBI was extremely controversial in the political, professional and public domains. Lengthy discussions and negotiations took place in the TREVI working groups, the Council and its working groups, and the European Parliament before agreement was reached on the model, the structure, the tasks and the competences of Europol. The decision to choose The Hague as the headquarters for Europol was taken following many heated discussions and some disputes and was only possible as part of a greater deal on the location of several EU institutions Europe-wide.

Data protection and the 'immunity' of Europol staff became a topic for considerable debate in the Member States, the European Parliament and in the public media. This resulted in the establishment of quite a number of control bodies as previously mentioned. However, in addition to the Council, the most prominent control body was to be the Management Board which was to become an extremely important mechanism for the further development and success of Europol.

The question of the Europol working language was never really officially solved. The JHA Council tasked Europol and its Management Board to find a pragmatic solution and come to a consensus on the working language, taking into account that working in even four languages would make efficient analysis and internal cooperation extremely challenging, if not even impossible. The EU enlargement increasing the European family from initially 12 to the current 28 Member States has brought further

challenges in this respect for Europol and in particular for the Management Board.

Initially, the chiefs of police in the Member States were highly sceptical about the need for the creation of a Management Board in addition to the supervisory control offered by the Council structure, the heads of national units (HENU), the financial control bodies, the data protection instruments, and others. But the results of the many Management Board meetings have proven its necessity and worth, especially its value for the further development of Europol, not only as a control body but also as an extremely valuable advisor to the Europol Directorate. The handling of the corruption and fraud case which rocked Europol in 2001 and resulted in the arrest of a leading member of staff and the resignation of a Deputy Director would have been extremely difficult without the guidance and support of the Management Board.

The Management Board meetings have, on occasion, been overshadowed by different national political interests among Member States. In some exceptional cases, delegates had to take a position knowing that it was counterproductive for the further development of the organisation but decided upon by their governments due to national political interests. On such occasions, patience, an enormous amount of work and diplomacy by the respective Chairman of the MB, the MB Secretariat and the Europol Directorate had to be exercised.

The challenge to fight crime, to develop new technologies, to create new working methods within the context of the political, legal and financial environment of Europol was

extremely demanding. We have succeeded mainly due to the good cooperation and team work developed between Europol, the Management Board and its Secretariat, the heads of Europol national units and the heads of police of the Member States, the latter two as the main clients of Europol.

But it is also necessary to emphasise the competence, courage, flexibility and the commitment shown by the staff of Europol. They joined Europol following a thorough selection process in which they had to prove professional competence, language skills and flexibility. Cultural changes from national, professional and personal perspectives were often huge. Working methods and professional behaviours were different from home. When partners or families stayed in the country of origin, the separation caused some difficulties. When the families joined the officials they had to get used to different customs, language and social norms. Intercultural and social initiatives undertaken by Europol helped in the transition period. However, the opportunity to be part of and to create something new was exciting and motivating for all of the staff irrespective of some uncertainties as regards tenure of employment or, in the case of law enforcement officers, return to national authorities. The opportunity to work in an international environment and to learn from other colleagues was a unique experience.

Europol has become a success story attributable to the professionalism of its staff and management and the close supervision by the Management Board. Some areas of conflict have arisen in the past between the management of Europol and members of

PERSONAL HIGHLIGHTS

Jürgen Storbeck & Emanuele Marotta

the Management Board, but these conflicts did not deter the smooth development and the general acceptance of Europol by the governments and the law enforcement community of the Member States.

Europol, in close cooperation with the members of the Management Board, has proven its commitment to create and preserve the European Union as a common area of freedom, justice and security despite the many challenges and threats impacting on such a concept. The fact that the Management Board and Europol gather

together for its 100th meeting is a special occasion for congratulation. It offers the opportunity to provide recognition not only of past achievements, but also to express trust and consolidate cooperation for the future work of the Management Board.



JÜRGEN STORBECK



PERSONAL HIGHLIGHTS

Emanuele Marotta

EDU Management Team, 1994-1999, and Europol Deputy Director, 1999-2001

... on Europol's prehistory

According to anecdotal evidence, the term "Europol" was first evoked in 1986 during a meeting organised in Munich by the German division of the International Police Association to celebrate its 40th anniversary. The meeting gathered police officers from several European countries and focused on improving international police cooperation. The participants discussed the need to find new forms of dialogue to tackle criminal developments since the only available channel, Interpol, did not allow for prompt and reliable answers to the increasing requests for information exchange.

Notwithstanding important investments made by European countries in human and financial resources at Interpol and the informal channels provided by border guard offices, which facilitated urgent linguistic problems but were unable to overcome procedural differences, the participants shared their frustration over the lack of a joint cooperation mechanism.

When the wish for a sort of European Interpol was expressed, someone from the audience shouted: "Right! We need a Europol!" This voice was followed by a sudden strong applause.

Although the term Europol seems to come from the operational environment, the idea of a structural enhancement of information exchange among the Member States of the European Community (EC) came from the political realm in the form of a joint answer from governments to the challenges brought to Europe by two forms of serious organised crime: illicit drugs and politically-motivated terrorism.

A first attempt to give a European answer to illicit drugs was set by the Co-operation Group to Combat Drug Abuse and Illicit Trafficking in Drugs proposed by French President Pompidou. The Pompidou Group was established in 1971 with the support of the Council of Europe to contribute to the development of multidisciplinary, innovative and effective drug policies and to allow the sharing of information and ideas related to the phenomenon among policy makers, experts and researchers in order to connect policy, practice and science.

Over time, the Group focused on the exchange of health-related good practices for the prevention and treatment of drug addiction, while at the police level, concrete operational requirements led to the diversification in numerous fields at regional and sub-regional levels (StAR Group, the USA-Canada-France-Italy Group, etc.).

The expansion of illicit drug abuse and the parallel increase of terrorism, especially in some countries, led EC governments to implement political and technical consultations in order to define common strategies and establish informal cooperation channels between the relevant justice and police authorities.

The TREVI group was thus set up in 1975 in Rome by the Ministers of Interior and Justice of the Member States who periodically set the political grounds for joint prevention and control actions.

The TREVI group worked on simple decision-making processes: the Ministers were supported by the technical expertise of the TREVI Senior Officials group comprising the highest police and judicial authorities, who, in turn, based their proposals on advisory work provided by experts from working groups. Among those working groups, TREVI III was established in 1985 to counter organised crime and drug trafficking.

A study was carried out within this working group with a view to the establishment of a structure aimed at exchanging information to counter drug trafficking (European Drugs Intelligence Unit, EDIU), the forerunner of the European Drugs Unit. This was the first step towards the establishment of the European Police Office proposed by the German Chancellor Helmut Kohl and later introduced by Art. K 1.9 of the Treaty on the European Union, known as the Maastricht Treaty.

Therefore, on a purely intergovernmental and pragmatic basis, Europe prepared its response to transnational crime, building on a scheme approved and supported by the European institutions, although originally as a separate project, as the former could not play the same role given to them by the Treaties on the European Communities in sectors reserved to national sovereignty.

The TREVI group was a cornerstone for the ensuing development of police cooperation

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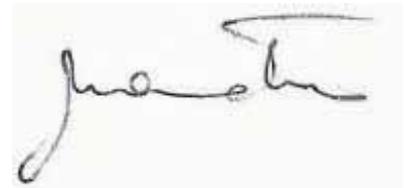
PERSONAL HIGHLIGHTS

Emanuele Marotta & Willy Bruggeman

among EU Member States, although cooperation was limited by its informal and somehow 'restricted' nature due to its original counter-terrorism goals. It laid down the foundation of the network which enabled European law enforcement to meet regularly, sharing information, working side by side and getting accustomed to a common analysis of topics until then considered of national domain.

Its major achievement has been the development — among European law enforcement operators — of the importance of information collection beyond boundaries, of joint analysis of such information and its transformation into

a common interest. Turning knowledge into counter-strategies, not only to defend national interests, but also to lead efforts and achieve results to higher and more appreciated levels, is the most impressive contribution made by Europol to international police cooperation.



EMANUELE MAROTTA



PERSONAL HIGHLIGHTS

Willy Bruggeman

EDU Assistant Coordinator, 1994-1999, and Europol Deputy Director, 1999-2003

... on Europol's past and future

In 1995, I published an article with the ambiguous title: "If I had a dream?" The purpose was, after 2 years of work at the Europol Drugs Unit, to explore possible futures for Europol. Looking back, it was impossible to forecast at that time the current Europol status and situation. A historical flashback is needed to understand our thinking at that time. Looking back at the 1970s and early 1980s in the light of the developments in 1993 and the Maastricht Treaty, police cooperation appeared to take place on

an ad hoc basis. Without question, the most significant structures in Europe were Interpol, the World Customs Organization (WCO), Schengen and the EU intergovernmental TREVI-derived network. At its meeting in Luxembourg on 28-29 June 1991, the European Council approved proposals for the establishment of a central European criminal intelligence office (Europol). At the time, the TREVI framework operated under the system of forerunner countries. As a result, in September 1992, a project group was

formed in Strasbourg to prepare a Europol Drugs Unit (EDU). Based on the outcome of negotiations on Justice and Home Affairs in the Maastricht Treaty, resulting in a compromise between the maximalists (Benelux, Italy, Spain) and minimalists (Denmark, Greece, Ireland and UK), a broad base was created for JHA cooperation under the roof of a new treaty, the Treaty of Maastricht. Europol was founded on the basis of Article K1.9.

On 2 June 1993, ministers signed the agreement establishing the EDU, being a forerunner unit for the creation of Europol. The Hague became the seat of Europol, although Rome was in pole position. At the Brussels summit in December 1993, it was decided that the ministerial agreement (interim phase) establishing the EDU should be replaced by a convention on Europol before October 1994, a convention which had to be ratified by all Member States. The EDU started its activities on 1 January 1994. I myself had arrived already at the pre-designed EDU headquarters in September 1993. Meanwhile, Jürgen Storbeck led a preparatory team in Strasbourg.

During this period, the working group Europol was meeting in the Egmont Palace and later in the Charlemagne building. By the end of 1994, 26 Europol liaison officers (ELOs) were already present in The Hague, seconded by the 12 Member States. At that time, there were still some doubts and frictions, admittedly. This was due in part to the fact that not all countries shared the same philosophy with regard to cooperation between the police and customs. Another factor was the lack of clarity about the respective role of the drugs liaison officers

posted at the embassies and the EDU ELOs. The EDU also had a double handicap: firstly, it had a limited mandate and, secondly, personal data could not be stored in a central data bank.

One of the key priorities of the German presidency (second semester 1994) became the Europol Convention. Mr Krause, high official of the Ministry of the Interior, chaired the group. At its meeting of 30 November-1 December 1994, the Council agreed to appoint for a period of 3 years Mr Storbeck as coordinator, Mr Rauchs and myself as assistant coordinators, and Mr Marotta and Mr Valls-Russel as members of the management team. In June 1995, a final compromise convention text was agreed under the French presidency. Europol became operational on 1 July 1999, after 3 years of run-up and 4 years follow-up (1995-1999). But before the 'new' Europol started its activities, the Council decided to extend its mandate to crimes committed or likely to be committed in the course of terrorist activities and to deal with forgery of money and other means of payment. The Treaty of Amsterdam (Article 30, paragraph 2) gave Europol a privileged position in the exchange of information between police forces. The (consolidated version of the) Treaty of the European Union (TEU) ⁽³⁾ addresses the role of Europol as part of police and judicial cooperation in criminal matters. The role of Europol was further elaborated in Article 30 of the TEU and Europol was established on the basis of the Europol Convention ⁽⁴⁾.

⁽³⁾ OJC 325, 24.12.2002, p. 1.

⁽⁴⁾ Council Act of 26 July 1995 on the Convention based on Article K.3 of the Treaty on the establishment of a European police office, *PB. C.* 27 November 1995, afl. 316.

From the start, Europol had an informative, supporting and analytical role. This became clear from the declaration on the police which is annexed to the Convention and which mainly talks about databases, support of national investigations, analysis of information and the development of preventive strategies ⁽⁵⁾.

In 2001, Europol's mandate was extended to deal with the serious forms of international crime listed in the annex to the Europol Convention. The Convention had in the meantime been subject to relevant changes, giving rise to three additional protocols ⁽⁶⁾:

- Protocol of 30 November 2000, amending Article 2 and the annex of the Convention;
- Protocol on the privileges and immunities of Europol, the members of its organs, the deputy directors and the employees of Europol of 28 November 2002;
- Protocol of 27 November 2003.

Pursuant to the Tampere conclusions, the Council adopted a recommendation in September 2000 foreseeing that Member

States should deal with any request from Europol to initiate, conduct or coordinate investigations in specific cases and should give such requests due consideration.

A month later, a recommendation was adopted inviting Member States to make full use of the possibilities of Europol support for joint investigation teams. By the end of 2001, Europol's staff amounted to a total of 203 with the exclusion of local staff. The budget was EUR 33.2 million. Europol had strategic agreements with the Commission, the European Central Bank (ECB), the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA), WCO, Colombia and the USA. Operational agreements had been concluded with Interpol, the Czech Republic, Estonia, Hungary, Norway, Poland, Slovenia and the USA. Since 2002 it was agreed that the procedure to amend the Europol Convention should be simplified. Several options had been elaborated. At that moment, there was no political consensus on a final decision on how to integrate the Europol Convention into the European Treaties and its potential 'transpillarisation', neither on the procedure, nor on its scope.

As a result, several hundred decisions, framework decisions and conventions that prove the vitality of third pillar cooperation had been initiated. Over the course of time, the EU has created a number of agencies ⁽⁷⁾ which now carry out more or less independently some duties, more particularly with reference to information management and inspections. Most of these organs, bodies or organisations had a different legal

⁽⁵⁾ Bruggeman, W., 'Policing in Europe: a new wave?', in Den Boer, M., *The implementation of Schengen*, Maastricht, European Institute of Public Administration, 1997, 111-128.

⁽⁶⁾ Europol protocols: the Protocol amending Article 2 and the annex to the Europol Convention of 30 November 2000, OJC 358 13.12.2000, p. 1, the Protocol on the privileges and immunities of Europol, the members of its organs, its Deputy Directors and its members of 28 November 2002, OJC 312 16.12.2002, p. 1 and the Protocol amending the Europol Convention of 27 November, 2003, OJC 2 6.1.2004, p. 3. The Convention of 29 May 2000 on mutual assistance in criminal matters between the Member States, OJC 197, 12.7.2000, p. 1 and its accompanying Protocol of 16 October 2001, OJC 326, 21.11.2001, p. 2 and Framework Decision 2002/465/JHA of 13 June 2002 on Joint Investigation Teams, OJL 162, 20.6.2002, p. 1.

⁽⁷⁾ *European agencies working across Europe for you*, European Commission, Office for Official Publications of the European Communities, 2004.

status and different working procedures and regulations.

In matters of law enforcement, Europol stood alone, since 1995, as an institutional player within the EU and was the only organisation, also within the framework of the third pillar, having been created on the basis of a convention. The Situation Centre (Sitcen, now INTCEN) was created to support political decision-making in the area of counter-terrorism. CEPOL was established by the Council decision of 22 December 2000⁽⁸⁾ with the aim of helping Member States in the training of their law enforcement staff. And finally Frontex would help Member States in their efforts to effectively secure the EU's external borders. OLAF (first pillar organisation) was given the role of dealing with irregular activities having an impact on the EU's financial interests. Eurojust was established in 2002 by a Council decision⁽⁹⁾ in conformity with Article 41(4) of the TEU as a body of the EU with legal personality and financed from the general budget of the EU, except as regards the salaries and involvement of the national members and assisting persons.

Before the end of my mandate, the Hague Programme was in full preparation. In 2004, the Council adopted this new multi-annual programme in the area of 'freedom, security

and justice'⁽¹⁰⁾. Within this programme the European Council urged the Member States to enable Europol in cooperation with Eurojust to play a key role in the fight against serious cross-border (organised) crime and terrorism:

- ratifying and effectively implementing the necessary legal instruments by the end of 2004;
- providing all necessary high-quality information to Europol in good time;
- encouraging good cooperation between their national authorities and Europol.

The drawback of the comparatively 'old' age of Europol is that its legal basis, a Convention, did not reflect state-of-the-art legislation as it was then possible under the existing EU political *acquis*.

What I remember very well are the numerous meetings in Brussels and other cities in order to prepare all these decisions. The creation of the Europol Management Board introduced a new phase, facilitating more sustainability in the sometimes difficult negotiations. Nevertheless, the overall spirit was positive and illustrated the willingness to bring Europol to a possibly higher and more effective intelligence performance. A very difficult moment for us was the arrest of a staff member (IT department) undermining to a significant extent the efforts of all the other colleagues working first at the EDU and later on at Europol. Finally, I am more than proud of having had the possibility to participate in the very early stage and in the

⁽⁸⁾ Now Council decision 20 December 2005 (OJ 01 October 2005), bringing the structure of Europol in line with the procedure of general budget of the EU and of the staff regulations of the officials of the European Communities and the conditions of employment of other sectors of the European Communities.

⁽⁹⁾ Council decision of 28 February 2002, amended by Council decision 18 June 2003 with a view to reinforcing the fight against organised crime.

⁽¹⁰⁾ Council of Europe 13993/04: European Commission, 5 November 2004, 14292/04.

Willy Bruggeman

pioneering first steps of creating concrete law enforcement collaborations.

When observing the current Europol organisation, it is nice to see that our successors (often previous colleagues) have done their utmost in further developing the initial and basic concepts. So we do not live a dream bis, but reality is showing that reinforced law enforcement collaboration in the EU is responding to a real need!

Leaving aside the example of bilateral cooperation, between nation states and from the perspective of the nineties, European police cooperation was an opaque and complex patchwork of institutions (official and otherwise), agreements and structures, which aimed to promote different forms of cooperation. Looking back, police cooperation emerged as a series of ad hoc developments, best characterised as 'a crowded police space'. The current EU

situation can be viewed positively with different countries, organisations and instruments, such as joint investigations teams and the upcoming European investigation order, facilitating to a great extent innovative and more effective ways of cooperation. The only risk factor seems still to be that some actors do not realise that they have to participate more structurally and systematically in the current international cooperation arena, including not only EU but also worldwide (Interpol) opportunities.



WILLY BRUGGEMAN

An evolving legal basis

The Management Board and the Europol legal framework

'It is no exaggeration to say that without the decisions of the Management Board Europol's legal framework would merely be "law in the books". The Management Board has decisive influence on the interpretation and practical implementation of the legal basis ⁽¹⁾.

Throughout its different stages of development, Europol has seen a succession of legal instruments and decisions: a Ministerial Agreement ⁽²⁾, a Joint Action ⁽³⁾, the Europol Convention ⁽⁴⁾, the

Europol Council Decision ⁽⁵⁾ and, finally, the Europol Regulation (the Regulation/ER) ⁽⁶⁾. While Europol's legal nature has changed over time — from an intergovernmental organisation to an EU agency — its role remained essentially unaltered: a European law enforcement support centre for the collection, exchange and analysis of information on cross-border forms of crime affecting two or more Member States. Likewise, while the composition and functions of the Management Board have evolved through the different legal frameworks, its essence has not changed: it remains the governing body of Europol, ensuring the participation of Member States and the Commission in the agency's decision-making through the exercise of strategic, planning and oversight functions.

⁽¹⁾ Niemeier, M. and Wiegand, M. A. (2010), 'Europol and the Architecture of Internal Security', p. 181, in Monar, J. (ed.), *The Institutional Dimension of the European Union's Area of Freedom, Security and Justice*, pp. 169-194, Brussels: P.I.E. Peter Lang.

⁽²⁾ Ministerial Agreement on the establishment of the Europol Drugs Unit; Copenhagen, 2 June 1993.

⁽³⁾ Joint Action of 10 March 1995 adopted by the Council on the basis of Article K.3 of the Treaty on European Union concerning the Europol Drugs Unit (95/73/JHA; OJ L 62/1).

⁽⁴⁾ Council Act of 26 July 1995 drawing up the Convention on the establishment of a European Police Office (Europol Convention) (OJ C 316).

⁽⁵⁾ Council Decision of 6 April 2009 establishing the European Police Office (Europol) (2009/371/JHA; OJ L 121/37).

⁽⁶⁾ Regulation (EU) 2016/794 of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Law Enforcement Cooperation (Europol) (OJ L 135/53).

Since its establishment, the Management Board has played a crucial role as the key translator of mere 'law in the books' into concrete decisions and actions. The MB has taken on the important duty of preparing implementing rules for the application of the different legal instruments; in doing so, it has dealt with a large number of issues ranging from the selection of the Director and Deputy Directors, staff regulations, data protection and financial and budgetary rules, to topics like Europol's index system, external relations or the rules for the security clearance of Europol officials.

The Europol Convention (1998-2009)

'The objective of Europol shall be ... to improve ... 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.'

(EUROPOL CONVENTION, ARTICLE 2.1).

When the Europol Convention entered into force on 1 October 1998, it provided a rather 'raw' legal basis for Europol that still required further development, thereby initiating a debate in the Management Board on the organisation's basic make-up and purpose. The MB was instrumental in this early phase for setting the agency on a course that would ultimately make it a success story. Article 28 of the Convention contained a fairly detailed description of the

Management Board tasks, highlighting the strategic role of the MB, in particular in the 'extension of Europol's objective' (Article 28.1.1). The Council, acting unanimously, remained responsible for deciding on the extension of Europol's tasks to terrorism or other forms of crime listed in the annex to the Convention, but it was for the Management Board to prepare the decision and to set out the budgetary and staffing implications for Europol. The expansion of Europol's mandate was achieved through the three protocols amending the Convention, the so-called 'Money Laundering Protocol' (2000), the 'Joint Investigation Teams Protocol' (2002) and the 'Danish Protocol' (2004).

One example of the Management Board's function in developing the legal basis relates to the long-term planning of Europol's tasks through a multi-year strategy. Article 18.10 of the Convention requested the Management Board to adopt each year a report on Europol's future activities taking into account Member States' operational requirements and budgetary and staffing implications. The Management Board was also tasked with adopting unanimously a five-year financing plan, although the Convention did not actually refer to a Europol strategy. The development of a vision for Europol in the years 1998-2000 was undoubtedly one of the most important tasks of the MB in the execution of its mandate and in the future development of Europol.

In addition to the strategic steering of the organisation, the Management Board had to deal with many other practical issues in the implementation of the Convention. This significant

work load is reflected by the high frequency of meetings. Whereas the Convention only required the MB to meet at least twice a year (Article 28.9), the MB had on average met seven times per year by the end of 2002, with four meetings only in the time between October and December 1998.

In order to effectively fulfil its mandate, the Management Board needed to establish its own working arrangements by drafting its rules of procedure. The Convention established that the MB would be composed of one member and one alternate member from each Member State and would be chaired by the representative of the Member State holding the EU Council Presidency. The Commission could be invited to attend meetings with non-voting status, although the Management Board could also decide to meet without the Commission representative. Over time, the only change to the composition of the Management Board has been the full membership of the Commission introduced by the Europol Council Decision. Under the Europol Convention, unanimity was the general rule for decision-making, with a two-thirds majority required for limited cases, such as disputes between a Member State and Europol or between Member States concerning compensation paid under the liability for un-

authorised or incorrect processing of data or for the opening order of a data file. Ten years later, the Europol Council Decision stipulated two-thirds majority voting for most MB decisions, while the most recent Europol Regulation sets simple-majority voting in the MB as the norm, with a few exceptions mentioned in Article 15.1.

Among the first and most relevant items on its agenda, the MB discussed and adopted the rights and obligations of liaison officers in relation to Europol, the Staff Regulations applicable to Europol employees, rules concerning external relations of Europol with EU bodies, and the financial regulation applicable to the budget of Europol. The broad spectrum of topics covered by the legal implementing acts and decisions adopted illustrates once more the Board's prevalent task in developing Europol's legal framework. Some of the organisational 'nuts and bolts' the MB had to deal with under the Convention related to finances. The financial regulation applicable to Europol needed to be implemented, annual budgets had to be drawn up and 5-year financing and business plans had to be designed so as to balance the growing needs of Europol and sound financial management.

EUROPOL CONVENTION

Article 28 — Management Board

1. Europol shall have a Management Board. The Management Board:

1) shall take part in the extension of Europol's objective (Article 2(2));

2) shall define unanimously liaison officers' rights and obligations towards Europol (Article 5);

3) shall decide unanimously on the number of liaison officers the Member States may send to Europol (Article 5);

4) shall prepare the implementing rules governing data files (Article 10);

5) shall take part in the adoption of rules governing Europol's relations with third States and third bodies within the meaning of Article 10(4) (Articles 10, 18 and 42);

6) shall unanimously decide on details concerning the design of the index system (Article 11);

7) shall approve by a two-thirds majority orders opening data files (Article 12);

8) may deliver opinions on the comments and reports of the joint supervisory body (Article 24);

9) shall examine problems which the joint supervisory body brings to its attention (Article 24(5));

10) shall decide on the details of the procedure for checking the legal character of retrievals in the information system (Article 16);

11) shall take part in the appointment and dismissal of the Director and Deputy Directors (Article 29);

12) shall oversee the proper performance of the Director's duties (Articles 7 and 29);

View from the translators' booth at an MB meeting at the old headquarters



13) shall take part in the adoption of staff regulations (Article 30);

14) shall take part in the preparation of agreements on confidentiality and the adoption of provisions on the protection of confidentiality (Articles 18 and 31);

15) shall take part in the drawing up of the budget, including the establishment plan, the auditing and the discharge to be given to the Director (Articles 35 and 36);

16) shall adopt unanimously the five-year financing plan (Article 35);

17) shall appoint unanimously the financial controller and oversee the performance of his duties (Article 35);

18) shall take part in the adoption of the financial regulation (Article 35);

19) shall unanimously approve the conclusion of the headquarters agreement (Article 37);

20) shall adopt unanimously the rules for the security clearance of Europol officials;

21) shall act by a two-thirds majority in disputes between a Member State and Europol or between Member States concerning compensation paid under the liability for unauthorised or incorrect processing of data (Article 38);

22) shall take part in any amendment of this Convention (Article 43);

23) shall be responsible for any other tasks assigned to it by the Council particularly in provisions for the implementation of this Convention.

2. The Management Board shall be composed of one representative of each Member State. Each member of the Management Board shall have one vote.

3. Each member of the Management Board may be represented by an alternate member; in the absence of the full member, the alternate member may exercise his right to vote.

4. The Commission of the European Communities shall be invited to attend meetings of the Management Board with non-voting status. However, the Management Board may decide to meet without the Commission representative.

5. The members or alternate members shall be entitled to be accompanied and advised by experts from their respective Member States at meetings of the Management Board.

6. The Management Board shall be chaired by the representative of the Member State holding the Presidency of the Council.

7. The Management Board shall unanimously adopt its rules of procedure.

8. Abstentions shall not prevent the Management Board from adopting decisions which must be taken unanimously.

9. The Management Board shall meet at least twice a year.

10. The Management Board shall adopt unanimously each year:

1) a general report on Europol's activities during the previous year;

2) a report on Europol's future activities taking into account Member States' operational requirements and budgetary and staffing implications for Europol.

These reports shall be submitted to the Council in accordance with the procedure laid down in Title VI of the Treaty on European Union.

The Europol Council Decision (2009-2016)

‘The objective of Europol shall be to support and strengthen action by the competent authorities of the Member States and their mutual cooperation in preventing and combating organised crime, terrorism and other forms of serious crime affecting two or more Member States.’

(EUROPOL COUNCIL DECISION, ARTICLE 3).

When the Europol Council Decision entered into force on 4 June 2009, the Management Board had behind it a consolidated experience of working and contributing to the development of a Europol legal, regulatory and procedural *acquis*. Yet, the new legal regime came with its own challenges, as it formally established Europol as an entity of the Union, funded from the EU general budget and subject to the general rules and provisions applicable to similar Union entities. Not only did this mean that different implementing acts and legal provisions were required to transform Europol into an agency of the EU, but it additionally affected the tasks and competences of its Board. Accordingly, an ad hoc MB committee met as early as March 2008 to begin the preparation of the implementing rules to enable Europol to transition smoothly and take up its work as an EU agency.

Under the Convention, the Council decided on the extension and focus of Europol’s mandate by instructing the agency to deal with specific forms of crime listed in its legal basis, having requested the Management Board to prepare

the Council decision. The new legal basis developed this provision under its Article 4, specifying that on a recommendation by the Management Board, the Council would lay down its priorities for Europol, taking particular account of strategic analyses and threat assessments prepared by Europol. The Europol Council Decision also acknowledged the crucial function developed in the past by the Management Board in developing the Europol vision, strategy and prioritisation policy. Accordingly, Article 37.9(a) tasked the MB with the adoption of a strategy for the organisation, including benchmarks to measure whether the objectives set had been reached, as well as a work programme for Europol’s future activities and a general report on the organisation’s activities during the previous year assessing the results achieved on the priorities set by the Council.

Article 37 of the ECD set the tasks of the Management Board in less detail, but in a more systematic way than the Convention, reinforcing the position of the MB in the overall strategic guidance and oversight of Europol. Indeed, Article 28 of the Convention contained both provisions where the Management Board was directly responsible for taking a decision and provisions where the Board only took part in the decision-making procedure. Article 37 of the Europol Council Decision, on the contrary, only enumerated those implementing rules and decisions where the Management Board had the main responsibility as the central decision-making body. Most of the oversight and control functions which the Management Board had under the Convention were carried on into the Europol Council Decision, such as

Article 37.9(b), tasking the Management Board with overseeing the Director's performance including the implementation of MB Decisions.

General EU implementing rules and legal acts had to be adopted and, in various cases, amended to fit the specificities of Europol. The MB consequently had to review Commission decisions that would normally apply to Europol by analogy and assess whether these needed to be adapted or waived. Not only in the beginning but regularly and consistently for every new piece of relevant EU legislation the MB thus acted as a mediator between the macro-level given by the EU legal framework of which Europol was now fully part of and the level given by Europol's daily work.

One of the most prominent issues the MB had to deal with following the entry into force of the ECD was data protection, as the Decision foresaw the establishment of a new system for processing personal data at Europol (Article 10.2-4). The MB had to specify the exact conditions and limitations under which Europol was to establish such a new system, including its precise purpose, access to and the use of data stored at Europol, and time limits for its storage and deletion. Similarly, the MB prepared the implementing rules for the analysis work files (AWFs) for the provision of information in support of investigations in EU Member States, thereby ensuring adequate conditions for the best possible criminal intelligence and analytical support, as well as the coverage of all high-priority serious crime areas impacting the EU.

EUROPOL COUNCIL DECISION

Article 37 — Management Board

1. The Management Board shall be composed of one representative of each Member State and one representative of the Commission. Each member of the Management Board shall have one vote. Each member of the Management Board may be represented by an alternate member; in the absence of the full member, the alternate member may exercise his right to vote.
2. The Chairperson and the Deputy Chairperson of the Management Board shall be selected by and from within the group of three Member States who have jointly prepared the Council's eighteen-month programme. They shall serve for the eighteen-month period corresponding to that Council programme. During that period the Chairperson shall no longer act as a representative of his or her respective Member State in the Management Board. The Deputy shall ex officio replace the Chairperson in the event of his or her being prevented from attending to his or her duties.
3. The Chairperson shall be responsible for the efficient operation of the Management Board in the performance of its tasks set out in paragraph 9 while ensuring a specific focus on strategic issues and Europol's principal tasks as set out in Article 5(1).
4. The Chairperson shall be supported by the Secretariat of the Management Board. The Secretariat shall in particular:
 - (a) be closely and continuously involved in organising, coordinating and ensuring the coherence of the Management Board's work. Under the responsibility and guidance of the Chairperson, it shall assist the latter in seeking solutions;
 - (b) provide the Management Board with the administrative support necessary for it to carry out its duties.
5. The Director shall participate in the meetings of the Management Board, without the right to vote.
6. Members of the Management Board or their alternates and the Director may be accompanied by experts.
7. The Management Board shall meet at least twice a year.
8. The Management Board shall act by a majority of two thirds of its members unless otherwise stipulated in this Decision.
9. The Management Board shall:
 - (a) adopt a strategy for Europol, which shall include benchmarks to measure whether the objectives set have been reached;
 - (b) oversee the Director's performance including the implementation of Management Board decisions;
 - (c) take any decision or implementing measures in accordance with this Decision;
 - (d) adopt the implementing rules applicable to Europol staff, on a proposal from the Director and after seeking agreement from the Commission;
 - (e) adopt the financial regulation and appoint the accounting officer in conformity with Commission Regulation (EC, Euratom) No 2343/2002 of 19 November 2002 on the framework Financial Regulation for the bodies referred to in Article 185 of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities, after consulting the Commission;
 - (f) establish the internal audit function and appoint its auditing staff, who shall be members of Europol staff. The Management Board shall adopt further implementing rules concerning the internal audit function. Those implementing rules should, in particular, cover selection, dismissal, tasks, duties, powers and safeguards for the independence of the function. The internal audit function shall be

accountable solely to the Management Board and shall have access to all documentation necessary to the performance of its duties;

(g) adopt a list of at least three candidates for the post of Director and the Deputy Directors for submission to the Council;

(h) be responsible for the performance of any other tasks assigned to it by the Council, in particular in provisions implementing this Decision;

(i) establish its rules of procedure, including provisions providing for the independence of the Secretariat.

10. Each year the Management Board shall adopt:

(a) the draft estimate of revenue and expenditure, including the draft establishment plan, to be submitted to the Commission; and the final budget;

(b) a work programme for Europol's future activities taking into account Member States' operational requirements and budgetary and staffing implications for Europol, after the Commission has delivered an opinion;

(c) a general report on Europol's activities during the previous year including the results achieved on the priorities set by the Council.

Those documents shall be submitted to the Council for endorsement. The Council shall forward them to the European Parliament for information.

11. Within four years of the date of application of this Decision and every four years thereafter, the Management Board shall commission an independent external evaluation of the implementation of this Decision and of the activities carried out by Europol. The Management Board shall issue specific terms of reference to that effect. The report of the evaluation shall be forwarded to the European Parliament, the Council and the Commission.

12. The Management Board may decide to establish working groups. The rules governing the creation and functioning of such working groups shall be laid down in its rules of procedure.

13. The Management Board shall exercise the powers laid down in Article 39(3) in respect of the Director, without prejudice to Article 38(1) and (7).

The Europol Regulation (2016)

'Europol shall support and strengthen action by the competent authorities of the Member States 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, as listed in Annex I.'
(EUROPOL REGULATION, ARTICLE 3.1).

Article 88 of the Treaty on the Functioning of the European Union (TFEU) provides for Europol to be governed by a regulation to be adopted in accordance with the ordinary legislative procedure. Under the Europol Regulation adopted by the European Parliament and Council on 11 May 2016 and applicable as of 1 May 2017, Europol will have new responsibilities and will gain flexibility with regards to its tasks and support services to Member States. The new Regulation confirms the tasks and functions of the Management Board as the supervisory body of Europol and an integral part of the administrative and management structure of the organisation. It states that the Management Board should be given the necessary powers, in particular to set the budget, verify its execution, and adopt the appropriate financial rules and planning documents, as well as adopt rules for the prevention and management of conflicts of interest in respect of its members, establish transparent working procedures for decision-making by the Executive Director of Europol, and adopt the annual activity report. The MB should also exercise the powers of appointing authority vis-à-vis staff of the agency including the Executive Director.

The composition of the Management Board — Member States and Commission — remains unchanged, but the Regulation does introduce a number of qualifying criteria in Article 10, requiring that Board members should be appointed taking into account their knowledge of law enforcement cooperation and the principle of balanced gender representation. More importantly, it foresees the possibility for the Board to invite a representative of the newly established Joint Parliamentary Scrutiny Group (JPSG) to attend its meetings. The Chairperson and Deputy Chairperson continue to be elected from within the group of three Member States that have jointly prepared the Council's 18-month programme, however, their election will be done by the full Management Board.

Overall, the MB will play a key role in setting the conditions upon which the new Europol Regulation will be implemented through the preparation of legal acts, some of which will have to be drafted anew, while others will draw largely from Europol's previous legal *acquis*. The Management Board will have to prepare and approve new decisions on the financial regulation applicable to Europol and on implementing rules giving effect to the Staff Regulations and the Conditions of Employment of other Servants of the EU. It will also have to draft and adopt internal rules including an anti-fraud strategy, rules on the selection, appointment and removal of the Executive Director and Deputy Directors and a policy on data transfers to third parties.

Under the Convention and the Council Decision, the Management Board played an important

role in the conclusion of agreements and working arrangements with EU institutions and bodies, as well as with third States and organisations. Following the Lisbon Treaty, the sole competence for the conclusion of international agreements is held by the Commission acting on behalf of the EU. The Management Board will continue to play a key role in identifying Europol's operational needs for cooperation with third countries or international organisations. It will have the responsibility of suggesting to the Council that the latter draw the attention of the Commission to the need for an adequacy decision (a decision finding that the country or international organisation in question ensures an adequate level of data protection) in order to allow the transfer of personal data.

Among the new elements which the MB will have to discuss is the Integrated Data Management Concept (IDMC). With the IDMC, Europol will be allowed to process data based on the purpose of the processing, namely for

cross-checking, for thematic or strategic analysis, for operational analysis and for the facilitation of information exchange. One key aspect is that the implementation of the IDMC requires the Management Board to design it according to the needs of Member States. This means that it should be future-proof, flexible and operationally driven, and should allow any implementation of Europol's processing possibilities. Member States and Europol have yet to decide how this new concept should look like and to define its purpose, conceptual and technical design, conditions and limitations. Discussing technical and conceptual details, and agreeing on a vision for the new IDMC that reconciles operational needs with European data protection standards and provisions, will be an important assignment for the Management Board Working Groups on Corporate matters and ICT. But it also opens up a new chapter in the overall Management Board responsibility towards Europol's core activity and *raison d'être*, which is the processing of data in support of Member States' investigations.

EUROPOL REGULATION

Article 11 — Functions of the Management Board

1. The Management Board shall:

(a) adopt each year, by a majority of two thirds of its members and in accordance with Article 12, a document containing Europol's multiannual programming and its annual work programme for the following year;

(b) adopt, by a majority of two thirds of its members, the annual budget of Europol and exercise other functions in respect of Europol's budget pursuant to Chapter X;

(c) adopt a consolidated annual activity report on Europol's activities and, by 1 July of the following year, send it to the European Parliament, the Council, the Commission, the Court of Auditors and the national parliaments. The consolidated annual activity report shall be made public;

(d) adopt the financial rules applicable to Europol in accordance with Article 61;

(e) adopt an internal anti-fraud strategy, proportionate to fraud risks, taking into account the costs and benefits of the measures to be implemented;

(f) adopt rules for the prevention and management of conflicts of interest in respect of its members, including in relation to their declaration of interests;

(g) in accordance with paragraph 2, exercise, with respect to the staff of Europol, the powers conferred by the Staff Regulations on the appointing authority and by the Conditions of Employment of Other Servants on the authority empowered to conclude a contract of employment of other servants ('the appointing authority powers');

(h) adopt appropriate implementing rules giving effect to the Staff Regulations and the Conditions of Employment of Other Servants in accordance with Article 110 of the Staff Regulations;

(i) adopt internal rules regarding the procedure for the selection of the Executive Director, including rules

on the composition of the selection committee which ensure its independence and impartiality;

(j) propose to the Council a shortlist of candidates for the posts of Executive Director and Deputy Executive Directors and, where relevant, propose to the Council that their terms of office be extended or that they be removed from office in accordance with Articles 54 and 55;

(k) establish performance indicators and oversee the Executive Director's performance, including the implementation of Management Board decisions;

(l) appoint a Data Protection Officer, who shall be functionally independent in the performance of his or her duties;

(m) appoint an accounting officer, who shall be subject to the Staff Regulations and the Conditions of Employment of Other Servants and functionally independent in the performance of his or her duties;

(n) establish, where appropriate, an internal audit capability;

(o) ensure adequate follow-up to findings and recommendations stemming from the internal or external audit reports and evaluations, as well as from investigations of OLAF and the EDPS;

(p) define the evaluation criteria for the annual report in accordance with Article 7(11);

(q) adopt guidelines further specifying the procedures for the processing of information by Europol in accordance with Article 18, after consulting the EDPS;

(r) decide upon the conclusion of working and administrative arrangements in accordance with Article 23(4) and Article 25(1), respectively;

(s) decide, taking into consideration both business and financial requirements, upon the establishment of Europol's internal structures, including Union centres

of specialised expertise as referred to in point (l) of Article 4(1), upon a proposal of the Executive Director;

(t) adopt its rules of procedure, including provisions concerning the tasks and the functioning of its secretariat;

(u) adopt, where appropriate, other internal rules.

2. If the Management Board considers it necessary for the performance of Europol's tasks, it may suggest to the Council that it draw the attention of the Commission to the need for an adequacy decision as referred to in point (a) of Article 25(1) or for a recommendation for a decision authorising the opening of negotiations with a view to the conclusion of an international agreement as referred to in point (b) of Article 25(1).

3. The Management Board shall, in accordance with Article 110 of the Staff Regulations, adopt a decision based on Article 2(1) of the Staff Regulations and on Article 6 of the Conditions of Employment of Other Servants delegating the relevant appointing authority powers to the Executive Director and establishing the conditions under which such delegation of powers may be suspended. The Executive Director shall be authorised to subdelegate those powers.

Where exceptional circumstances so require, the Management Board may, by way of a decision, temporarily suspend the delegation of the appointing authority powers to the Executive Director and any subdelegation of such powers and exercise them itself or delegate those powers to one of its members or to a staff member other than the Executive Director.



Arne Schlatmann
MB Member for Germany

... on the MB's competences de jure and in practice under the Europol Regulation

Even after the new Europol Regulation, the Management Board will remain Europol's key steering body next to the Executive Director. The legal basis for the Europol Management Board is changing in line with Europol's overall development from an international organisation founded outside the EU framework to an EU agency.

I. This development can be clearly seen in the effort to ensure that the legal basis for the Management Board follows the intended guidelines for the structure and administration of EU agencies ⁽⁷⁾. It is possible to distinguish the following key aspects:

1. The composition of the Management Board and the weighing of votes remain unchanged under the Europol Regulation. The Management Board is still made up of one representative from each Member State and one representative of the Commission; each representative has one vote. The Council successfully opposed adding a second Commission representative who would have had one vote.
2. There have been changes in the personal requirements for members of the Management Board, in the length of their

terms and in the prevention of conflicts of interest. Neither the Europol Council Decision nor the Management Board's rules of procedure had covered these aspects. According to the Regulation, members of the Management Board and their alternates are now to be appointed 'taking into account their knowledge of law enforcement cooperation'. The Regulation also calls for a 4-year term and for balanced gender representation; the Management Board is also supposed to adopt rules for preventing and managing conflicts of interest in respect of its members. This limits the selection rights of the Member States and the Commission in legal terms; in fact, however, there are no control or sanction mechanisms, and the term of membership may be extended. In practice, the Member States and the Commission appoint to the Management Board persons who are responsible for this area. These persons possess the necessary knowledge by virtue of their office; their sex or length of term play little role. Nor should one expect the Regulation to cause or require any changes in this appointment practice.

3. In the negotiations, the European Commission proposed establishing an executive committee smaller than the Management Board. This proposal failed due to opposition from a majority of the Member States, above all because such

⁽⁷⁾ Joint statement of the European Parliament, the Council of the EU and the European Commission on decentralized agencies" of 19 July 2012.

a committee would provide only selective representation. In practice, no decision-making deficits of the Management Board due to its size are apparent and the rules of procedure also allow flexibility in setting up working groups.

4. A new development with more political significance is the Management Board's shift in principle to majority decisions. Under the Regulation, decisions are to be made with a two-thirds majority only on a few important issues such as the multi-annual programming, the annual work programme, the budget and the appointment of the Executive Director; under the Europol Council Decision, two-thirds majority decisions have been the rule. In practice, the Management Board regularly makes unanimous decisions. So far there have never been any stalemates, also due to the fact that the MB strives for consensual decision-making and that, as a rule, decisions are largely coordinated with the Member States before they come before the Management Board. So no practical consequences are to be expected.
5. When it comes to selecting the Executive Director, the Management Board will still have the central task of presenting a shortlist of candidates to the Council. To do so, the Management Board forms a selection committee. The Member States have rejected the Commission's ideas for preselecting candidates, although at the same time they have insisted that the Council should decide on appointments and whether the Executive Director's term of office should be ended or extended.

6. Lastly, the Europol Regulation states that Europol must publish on its website not only a list of the Management Board members, as previously, but also summaries of the outcome of the meetings of the Management Board. But Europol must also take into account its obligations of discretion and confidentiality and the agency's operational orientation.

II. The work and organisation of the Management Board are influenced above all by the development of primary law in the Treaty of Lisbon, especially by the parliamentary scrutiny of Europol carried out by the European Parliament together with national parliaments (Article 12(c) TEU, Article 88(2) TFEU).

1. This is expressed in particular in the possibility for the Management Board, now explicitly provided for, to invite representatives of the new Joint Parliamentary Scrutiny Group (JPSG), based at the European Parliament, to meetings of the Management Board. Here it will be necessary to carefully monitor the growth of a shared understanding of the division of tasks. The Regulation does not make this entirely clear, which could lead to problems. A representative of the JPSG attending a meeting of the Management Board will necessarily have greater access to meeting documents and ongoing opinion-formation processes and may thereby exceed the intended political scrutiny. Here it will also depend on the individual representative and the kind of feedback he or she provides to the JPSG. At worst, this could lead to a loss of the culture of open discussion in

the Management Board when the JPSG is present as an observer.

2. The Regulation also states that, in order for the Joint Parliamentary Scrutiny Group to politically monitor Europol's activities, the Chairperson of the Management Board, the Executive Director or their deputies are to appear before the JPSG at its request to discuss matters relating to Europol's activities, including the budgetary aspects of such activities and organisational ramifications. The JPSG is also to be consulted in relation to Europol's multi-annual programming, and is to be sent various relevant documents for its information, such as Management Board agreements and the annual activity report. Here it remains to be seen how the political scrutiny of Europol will be carried out by the parliaments.
3. The responsible committee of the European Parliament may request that the candidates selected by the Council for the post of Executive Director appear before it prior to the appointment and may provide a non-binding opinion.

III. In conclusion, it should be noted that, despite all the changes, the Europol Management Board remains the central body for monitoring and evaluating the work of the Executive Director and continues to set the course for Europol's operational activities. The Management Board remains responsible for adopting the annual work programme, budget plans and the multi-annual programming. The Board exercises the powers of the appointing authority with regard to Europol staff and decides on establishing Europol-internal structures. It defines the procedures for processing information and approves the conclusion of working and administrative agreements in external relations. It designates the data protection officer and the accounting officer, establishes an internal audit capability and adopts all further internal provisions as needed.



ARNE SCHLATMANN

Europol's internal governance

The internal role and relations of the Management Board

In the Europol context, internal corporate governance can be defined as the establishment of policies and practices, their exercise and the continuous monitoring of their proper implementation by the Management Board, the Director and other bodies in order to achieve the goals of Europol. These responsibilities may include such functions as management and control, which imply direct involvement in decision-making regarding the organisation's policies or practices, as well as oversight, interpreted as the scrutiny of Europol's activities with the aim of evaluating compliance with agreed criteria and standards. This chapter looks into the development of governance practices during the initial years of the Management Board and their consolidation under the Europol Council Decision.

Corporate governance under the Convention

The Management Board was one of four 'organs of Europol' established by the Convention under Title V on 'Legal Status, Organisation and Financial Provisions' together with the Director, the Financial Controller and the Financial Committee. Its governance duties included helping to determine Europol's priorities and the 'extension' of the organisation's objective, selecting and dismissing the Director and Deputy Directors, determining the rights and obligations of liaison officers, laying down data-processing rules, taking part in the drawing up of the budget, the establishment plan, the auditing and discharge, preparing rules for work files or examining problems brought to its attention by the Joint Supervisory Body (JSB).

Originally, Europol had the status of an international organisation operating at the inter-governmental level with all the attributes of a subject of public international law. This included the possibility of maintaining international relations, contracting, taking responsibility for violations of the law or having specific immunities and privileges. The model of control and supervision of Europol under the Convention was directly connected with these attributes of its legal personality on the international level. However, the leading role of the MB in internal governance went beyond what was generally the norm in the typical institutional setting of intergovernmental organisations dealing with security matters. The political debate that took place from 1992 to 1995, ahead of the actual establishment of Europol strongly influenced the governance arrangements. Member States certainly wanted to preserve their competences in an area of exclusive state sovereignty for political and operational reasons, which resulted in a classic intergovernmental configuration. However, the highly sensitive nature of the subject matter — international police cooperation — was a complicating factor for multilateral engagement in a traditionally conservative constituency. At the time, Member States claimed that giving the European Communities any kind of jurisdiction over criminal matters would determine an excessive centralisation of power and that ‘full democratic control’ would be best guaranteed if Europol remained within the intergovernmental third pillar structure.

Therefore, the intergovernmental option coloured the governance set-up of Europol. This is well reflected in the ‘Europol Drugs

Unit Vision’ of October 1997, which stated that ‘in line with any democratic country’s police authority, effective control of an EU law enforcement cooperation and intelligence centre is essential.’ For this, the ‘organs of Europol’ should ‘always foresee the representation of the different Member States’. Moreover, the Vision stated that the ‘composition of the Council of Ministers from all Member States and the requirement for unanimous decisions guarantees democratic control of Europol.’ Unlike in national structures, where the executive branch is subject to judicial and parliamentary control, the governance arrangement chosen for Europol placed most if not all control and oversight mechanisms in the hands of Member States themselves, through their different configurations in the Management Board or the Council.

The Convention, however, did contain provisions for the control of Europol as regards the protection of personal data and of the right of citizens to access personal files. The most relevant instrument in this respect was the JSB, an independent body responsible for monitoring the activities of Europol in order to ensure that the rights of individuals were not violated by the storage, processing and utilisation of the data held by Europol. The JSB was also responsible for monitoring the permissibility of the transmission of data originating from Europol. It was composed of representatives of each of the national supervisory bodies, guaranteed to be independent and appointed by each Member State. The work of the JSB was complemented by that of national supervisory bodies, which ensured at national level that

the handling of personal data received from or sent to Europol did not violate individual rights in accordance with the respective national law.

On a more technical level, the Convention also established that the Management Board would appoint and oversee the duties of a Financial Controller responsible for monitoring Europol's income and expenditure. A Financial Committee composed of one budgetary representative from each Member State was responsible for preparing and discussing all budgetary and financial matters.

The sequence of Europol's establishment further contributed to assert the institutional position of the MB, as it pre-existed the other organs of Europol and had the responsibility for their establishment. Indeed, when the Management Board met for the first time in October 1998, the ratification process of the Convention had not yet been finalised, more than 3 years after its adoption. Therefore, the MB started its activities while a fledgling organisational structure was still being developed. Member States meeting at the MB had yet to agree on the structure of the directorate and the appointment procedure for the Director and Deputy Directors. In October 1999, the Management Board appointed an evaluation team, which examined, among other issues, the 'management practices and organisational designs' of Europol. In a report presented to the MB in February 2000, the evaluation team noted the 'differing and sometimes conflicting priorities at the political and law enforcement levels with respect to what Europol should do

and how'. Lack of commitment, poor feedback, insufficient support and different expectations on the part of Member States were cited as reasons explaining delays in planning and implementation of Europol's activities. One of the conclusions was that the MB and the HENUs had 'provided inadequate strategic guidelines to Europol'. As a result, Europol's management had 'filled the void by proposing an ever-increasing volume of activities' and initiatives.

Another aspect touched upon in the report was the evaluation of Europol's work. The report recommended that the MB should use activity reports and all other relevant evaluation tools more systematically, but that the MB could also consider establishing an external 'monitoring group' to support its work in this area. When the evaluation report was presented to the MB, the Director remarked that a direct link between the MB and the Director was crucial for the successful management of the organisation. Therefore, the establishment of a monitoring group working between the two main Europol organs could create difficulties and raise some concerns. Another objection was that such a body was not in line with the institutional relationships between the Director and the MB as expressed in the Europol Convention. Indeed, regular continued evaluation was an essential task of the Director, while financial monitoring was carried out by the Financial Controller. The idea was eventually abandoned, but reflected well the difficulties of Member States in coming to grips with Europol's organisational complexities in the initial stages of its functioning.

Therefore, just over a year into its running, it had become evident to the Management Board that the implementation of the governance provisions contained in Europol's legal foundation had to be improved. The general understanding was that the MB had to become more active on strategic issues and in the prioritisation of Europol's goals, whereas Europol's directorate should concentrate more effectively on managing Europol and its operational priorities. This required more clarity in the respective roles of Europol's main governance actors and a practical definition of the relationship between the MB and the Director. But, it also called for more active engagement on the part of the MB in terms of prioritising activities, providing more strategic direction to the organisation and giving precise guidelines to the Europol directorate.

As mentioned in Chapter I, in order to strengthen the governance responsibility of Member States, a special meeting of the MB took place in Paris on 4-5 December 2000 to prepare a comprehensive vision of the future mission of Europol and of the MB's role. The main objective of the exercise was to improve Europol's operational strength by enhancing the quality, acceptance and awareness of its support services to law enforcement authorities. Member States felt the need to better define the priorities and tasks of the organisation in terms of crime areas, support to investigations and development of operational analysis. In addition, the MB explicitly stated that the objective of creating a vision for Europol was also to create more transparency in respect of management, including through the establishment of an ac-

countability mechanism, as well as to generate more 'institutional improvement, especially with regard to the relationship between the Management Board, the Europol Director and other bodies.' However, the conclusions of the Vision document lacked any reference to governance and institutional issues. In fact, none of the 21 points contained in the Vision implementation plan adopted by the MB in February 2001 referred to governance.

The issue, however, remained on the agenda and at the MB meeting in September 2001 the Belgian Presidency tabled two proposals outlining the guidelines for a Europol approach to devise control mechanisms and for the establishment of a working party composed of experts, which would prepare proposals on the implementation of a management control system, corporate governance relationship, investigation into financial control and reporting mechanisms and establishment of a professional standards unit. This was part of the measures deemed necessary to react to the serious problems faced by Europol following a mismanagement case.

The Presidency argued that, while Europol's means and role were to grow over the next few years, there was no clear strategy about which aims should be pursued and the required means to do so. The Presidency paper described a situation where relations between the MB and the directorate were considered unsatisfactory by both parties and where the MB received no or incomplete answers to key questions on strategic planning, transparent budgeting, reporting on achievement or financial implementation;



The MB at its 99th meeting in May 2016 under the Chairmanship of Arie Ilzerman

conversely, the directorate wanted more autonomy and pointed to the risk of micro-management by the MB. These circumstances required the elaboration of a strategy presenting Europol's mission, aims and means, as well as the development of an efficient management control system.

In April 2002, the MB discussed a report on corporate governance and decided to establish a strategic governance working group, which should report to the MB meetings in Valencia in May 2002 and Copenhagen in October 2002. The report made a number of recommendations, although most of the comments related to the internal functioning of the MB, such as the flow and quality of information or consultation procedures. The most relevant finding was that the MB had to reassess its strategic role and reorient or strengthen it. This required updating the vision of Europol and developing a clear strategy

for the organisation taking into account a rapidly changing security environment in the aftermath of 9/11. Indeed, Europol was ending its 'inception phase' and becoming a fully fledged organisation, but it still had to establish its own role, working space and image among national and international law enforcement actors. The report also recommended a twofold improvement of strategy implementation and monitoring: Europol had to report more regularly to the MB on its core activities and priorities, with an additional emphasis on transparency, measurability and risk assessment; on the other hand, the MB had to improve its decision-making.

The proposals from the Corporate Governance Working Group also attempted to clarify the roles of the main organs of Europol. The MB remained the decision-making body of Europol, except for the issues falling under the exclusive competence of the Director or the Council.

Therefore, the MB had the responsibility to decide on the objectives of Europol while other bodies, such as the HENUs, played a consultative role. The Management Board was also responsible for overseeing the proper performance of the Director's duties. This monitoring function implied taking decisions and giving guidelines on the nature and frequency of the Director's reporting. As the MB was responsible for the policy and budget outlines, it was also responsible for verifying whether clear links were established between the work programme and the budget. The Management Board's discussion on the budget, for example, had to guarantee prioritisation based on a shared vision of the organisation's future and on a careful analysis of the organised crime reports and assessments. Such shared vision had to reflect the common interest of the Member States at EU level and not just the mere sum of domestic interests. On the other hand, in the interest of the organisation, MB members had to commit themselves to compromising on a more limited number of priorities based on thorough consultations of respective HENUs, national security policymakers and financial authorities. When expressing an opinion, the MB should make a careful assessment of the added value and the value for money of Europol's proposals, concentrating on the priorities and the main strategy, while avoiding discussion of details.

Altogether, the evaluation report of February 2000 left a lasting legacy in terms of setting the tone for Europol's future institutional balance. It directly or indirectly contributed to improving Europol's governance by facilitating the monitoring function of the MB. The report had

recommended that Europol should prepare a comprehensive plan on how to develop its planning processes and evaluation systems at the basis of which should be an agreed vision of its role. Europol's planning and budgeting processes were generally adequate, but the different documents and instruments were mostly short-term and mutually unrelated. In particular, there was little strategic guidance from the MB and the directorate on priorities and criteria for action. In Paris, the MB had defined its vision of Europol as an organisation that shall serve the European Union by providing criminal intelligence services, working from a multi-agency approach, focusing on serious cross-border organised crime, thereby significantly contributing to the European area of freedom, security and justice. This definition of the vision, mission and key objectives and the understanding that Europol should concentrate its means and resources on a reduced number of agreed priorities with clear operational results, became the basis for the ensuing strategies and evaluation systems.

A stronger governance under the Europol Council Decision

As a regular ongoing process, Europol's governance has been subject to permanent readjustments in line with changing priorities, mandates or legal frameworks. Indeed, attempts by the Council to address Europol's requirements by reforming the Convention through amending Protocols were complicated by the years' long ratification process required for any change to the intergovernmental legal basis. In an attempt to find a more tractable approach,

the Austrian Presidency launched a discussion on the future of Europol, which included an informal ministerial meeting in Vienna in January 2006 and a high-level stakeholders' conference in February 2006.

One of the key issues considered was the need for flexible governance procedures to manage Europol and enhance its operational role. On the one hand, Member States generally agreed that more effective corporate governance was needed and realised that faster operational procedures could not be materialised within the existing governing framework. On the other hand, they wanted to preserve their primacy in the governance of Europol, preferring to avoid complex changes in its internal structure. The conclusions of the High Level Conference of 23 and 24 February 2006 ⁽¹⁾ reflect that Member States settled for a 'different attitude' towards corporate governance, recommending a streamlining of decision-making processes of the MB and the directorate. Member States felt that 'too much paperwork' was involved in the MB's work and that 'resources could possibly be saved on both sides if a clear expectation would be expressed on the precise role of the Management Board in Europol's corporate governance.'

In April 2006, the Council issued conclusions on 'Europol: the way forward towards more efficiency and accountability' recommending the replacement of the Convention with a Coun-

cil decision. The Council vowed to maintain its role in setting the strategic priorities of Europol, while the MB was given 'an appropriate role in the supervision of the management of Europol.'

The handling of governance in the new legal framework was a sensitive matter and the legislator struck a delicate balance between continuity and change. The Council decision was not a simple transposition of the Convention and its three amending protocols, but actually introduced new elements. In general terms, Europol's internal governance remained entrusted to the Management Board and the Director, established as the two organs of Europol, whereas the Financial Controller and the Financial Committee disappeared. A more refined system of checks and balances was put in place, which was meant to improve governance and streamline procedures. The MB continued to oversee the Director's performance including the implementation of MB decisions, while the Director remained responsible for the performance of the tasks assigned to Europol and its day-to-day administration. He also remained accountable to the MB in respect of the performance of his duties.

Altogether, the position of the Director did not fundamentally change with respect to the Convention: he was not considered a member of the Management Board, but could participate in its meetings without the right to vote. Lawmakers made a conscious decision not to establish a clear demarcation of powers between the

⁽¹⁾ Commission staff working document — Accompanying document to the Proposal for a Council Decision establishing the European Police Office (Europol) — Impact assessment — COM(2006) 817 final.

Board and the Director as suggested by some analysts ⁽²⁾.

Under the Convention, the MB Chairmanship changed every 6 months in line with the Council Presidency, something which did not facilitate continuity. Some Member States had recommended that the Chairman of the MB should be decoupled from the rotating EU Presidency and that the entire Management Board should elect the Chair, for a longer period, renewable once ⁽³⁾. The Council Decision did not go that far but did introduce more stability to the position of the Chairperson and Deputy Chairperson. Both were selected by and from within the group of three Member States which had jointly prepared the Council's 18-month programme and served for the corresponding period. The decision-making procedures were also simplified as the MB would act, as a general rule, by a majority of two thirds instead of the previous unanimity under the Convention.

Member States' wish to improve Europol's governance through a results-based management approach was reflected in two new provisions. The general report on Europol's activities to be adopted each year by the Management Board had to include the results achieved on the priorities set by the Council. In addition, the Director, in cooperation with the MB, had to establish

and implement an effective and efficient monitoring and evaluation procedure relating to Europol's performance in terms of achievement of its objectives, and had to report regularly to the MB on the results of that monitoring.

Building on the outcome of previous strategic documents and conclusions from Management Board policy discussions, the Europol Council Decision took on board the need for the MB to adopt a strategy for Europol including benchmarks to measure whether the objectives set had been reached. This new task was a key enabler meant to give the Board a real strategic competency. Interestingly, though, the procedure adopted by the Management Board for the preparation of the first Europol Strategy under the new legal framework considerably limited its own role. At the meeting held on 17-18 March 2009, which discussed the procedure, one delegation noted that there appeared to be a shift of responsibility from Member States to Europol with regard to the initiative for defining the strategy. This seemed to be in contradiction with Article 37.9 of the ECD, which established the adoption of the strategy as one of the core tasks of the MB. While that member wondered whether the MB intended to divert from this task, it was clear that the MB made a literal interpretation of the Decision and preferred to adopt rather than to develop the Strategy 2010-2015.

At the Management Board meeting in December 2010, Belgium submitted a discussion paper on the role and position of the MB in the post-Lisbon era, following the entry into force of the ECD. In March 2011, the MB decided to

⁽²⁾ See for example: 'Europol, quoi de neuf? Une approche critique de la Décision Europol', by De Moor, A. and Vermeulen, G., *Revue internationale de droit pénal*, 2011/1 Vol. 82, pages 157 to 187.

⁽³⁾ See *Europol: coordinating the fight against serious and organised crime*, House of Lords, European Union Committee, 29th Report of Session 2007-08.

establish an 'Ad Hoc Committee on the MB role and relationships with other bodies' that met throughout 2011 and agreed on a number of conclusions, which were presented to the Management Board at the end of the year. Most delegations agreed that the responsibility of the MB had changed under the new legal framework, although most believed that the MB still had an important role to fulfil, in particular by representing the operational needs of Member States' law enforcement services. The majority of delegations agreed that the MB would be devoting less time to legislative work in the near future, focusing instead on implementing measures. The most important task of the MB was to elaborate, decide, monitor and evaluate Europol strategies. At its meeting on 30 November-1 December 2011, the MB endorsed the proposals of the ad hoc committee, which concluded that the most important task of the MB was to determine the strategic direction of Europol. This primarily concerned the Europol strategy, as well as the yearly work programme and it was therefore important to create the best circumstances in which the MB could perform such a task. This was partly achieved through a more effective use of the Working Group on Corporate matters in preparing the debates of the MB.

Looking ahead

Looking ahead onto the final years of the Europol Council Decision and the new Europol Regulation, the challenge for the MB remains how to exercise its tasks and responsibilities among the multiplicity of bodies and centres that exert varying degrees of influence on Europol. The

Europol Regulation does not fundamentally alter the functions of the MB; it does, however, introduce some changes to improve the governance of Europol by seeking efficiency gains and streamlining procedures. While it reaffirms that the MB should be given the 'necessary powers', the ecosystem in which Europol operates has considerably evolved and the institutional environment has become more composite and sometimes contentious. In this regard, the mere preservation of the MB's fundamental tasks under the new legal framework may not suffice to ensure that the Board can exercise its functions effectively. The MB continues to ensure representation of Member States within Europol, but it is not the sole body where Member States can discuss Europol matters. Nonetheless, the distinctive advantage of the Management Board lies in its potential to strike the right balance between political priorities formulated by the Council and its groups and the operational needs and requirements as expressed by the national law enforcement agencies.

The Management Board will continue to be the strategic body responsible for high-level decisions concerning Europol insofar as it will translate political priorities into decisions that have an operational meaning. The Board cannot just be a forum for Member States' representation, it has to act as a facilitator between the different levels of Member States, as well as Europol in what remains a complex organisational structure. Concerning operational matters, the HENUs should continue to provide the MB with first-hand assessment of Europol's operational capacity.



Peter De Buysscher
MB Member for Belgium

... on the role of the Management Board in internal governance matters

From the entry into force of the Lisbon Treaty, it was clear that the role and the position of the Management Board were going to change. Not only did the balance of power between the Board and the directorate of Europol need to be clearly defined, it was also clear that the position and the competences of the Management Board as regards the other internal EU actors such as the Council of the European Union (Standing Committee on operational cooperation on internal security - COSI and working groups), the European Commission and the European Parliament, was going to become an important issue. As early as 2011, the Management Board took the anticipatory step to create an ad hoc committee which in November 2011 wrote the document 'The tasks of the Management Board, its role and position' that contained a number of recommendations. Five years later, with the Europol Regulation adopted by the European Parliament and the Council, it is interesting to revisit that document.

Indeed, it was already clear at the time that the number of tasks assigned to Europol was increasing and that this would have an impact on the allocation and spending of resources. Therefore, it would have been easy to assume that, despite the political context in which Europol was to operate in the future, the role of the Management Board would become more important

given the fact that, in the context of the Europol Council Decision, the Board already had the important task of helping to determine the strategic direction of Europol.

Moreover, this role has not become less important in the new Europol Regulation: the Management Board still adopts the multi-annual programming document and the annual work programme, as well as the annual budget.

Nevertheless, it is clearly perceived that the more Europol was given additional tasks after 2011, the less the Management Board was able to play its strategic role, despite the fact that in 2011 there was already a plea for finding a good balance between Europol responding to requests as an eager professional organisation, but at the same time adopting a careful approach, as these requests have their impact on the allocated budget and the goals set within the work programme. One of the conclusions of the report on the role of the Management Board was that, for requests that were more or less predictable, the MB members should decide on 'framework instructions' to be used by Europol and by delegates within the Council working structure. In this context, an early warning system would be initiated for Europol to inform the Management Board as soon as possible on a request to take on a new task,

so that the Board could play its role and formulate such a framework instruction. All requests to take on new tasks would then have to be assessed on the basis of the work programme.

In view of the fact that Europol has recently been assigned several other tasks, given the rapidly evolving security picture and the present-day threats (the European Counter Terrorism Centre-ECTC, including the Joint Liaison Team and the Internet Referral Unit-IRU; or the European Migrant Smuggling Centre-EMSC including the guest officers; or the European Cybercrime Centre-EC3, etc.), we find that not much remains of these conclusions and that the Management Board has been unable to adequately play its proactive role in this field. At the Management Board meeting of May 2016, it was quite clear that several Member States had come to the same conclusion and that there was quite some support for a priority-setting mechanism for existing and new tasks that had to be discussed and adopted by the Management Board.

Of course, political decision-making and the political context are important in the assignment and prioritisation of new tasks, but given the role of the Management Board as defined in the Europol Regulation, this should not reduce the Board to a forum that only reactively takes note of the decisions. A state of affairs in which a political supervisory authority informs a member of the Management Board of a new task for Europol instead of vice versa, can only be detrimental to Europol in the long term: when a new task is assigned without prior and transparent discussion in the Management Board, the practical

implementation of such a new task is likely to cause more problems. Indeed, the Management Board can for instance take note of the Council Conclusions for Europol to be able to develop the concept of guest officers, but it might prove a lot harder for the Member States to organise the deployment of such staff members and combine it with the capacity deployment for their own national priorities. It is much easier to take a political in-principle decision that might offer opportunities for Europol, than to materialise this decision by making available the most appropriate people and means. This can only be optimally achieved by involving the representatives of the Member States in the Management Board from an early stage to allow them to prepare the implementation of the decision in a realistic manner in consultation with their national authorities.

Each new task often leads to a shift in budgets and means with a direct impact on the functioning and the internal organisation of Europol. To find a balance between anticipating new trends and developing and preserving the tasks that are part of Europol's core business and that offer much operational added value to the Member States is a task to which the Management Board should be able to commit more, given the fact that it is the most appropriate forum to reconcile the political priorities with the operational added value of Europol for the Member States.

There is an apparent shift of the competence of monitoring Europol's activities from the Management Board to other Council structures and more specifically COSI. It appears to be very difficult for the Board to take a formal position on Europol's

activities in relation to these other forums. For example, the EU Internet Referral Unit and the ECTC have to be monitored by COSI. The question may legitimately be asked whether COSI can achieve this in practice and whether this role could be taken on by the Management Board via periodic reporting to COSI about the handling of the tasks.

Of course, a forum that celebrates its 100th meeting also needs to take a critical look at itself. If the Management Board wants to be more involved in the development of new tasks and initiatives for Europol and sees prioritisation as one of its core tasks, the discussions on matters such as the Europol work programme, the main document on priorities and orientation of budgetary means, will have to become less sterile than they are now. At present, the interventions on the subject are limited to a few Member States, which is surprising as it is one of

the core competences of the Management Board. A fruitful discussion based on solid knowledge of the state of play and close consultation between each Management Board member and his/her supervisory authority are important conditions in this context. This might make the work of the Management Board more difficult, but also a lot more meaningful.



PETER DE BUYSCHER

The Management Board in the wider EU framework

Accountability between politics and operations

In the early 1990s, transnational organised crime was a relatively new phenomenon on the EU agenda, cooperation on justice and home affairs took place in the TREVI framework and there was limited experience at community-level. The Convention established Europol as an intergovernmental organisation operating within the wider political framework of the European Union and standing alone in the third pillar. In that context, the initial role of the MB was typical of intergovernmental institutions where governance and control were mainly in the hands of Member States and the organisation operated with a certain degree of institutional isolation.

However, the increasing complexity of the institutional environment in which Europol carried out its activities, especially after its transformation into an EU agency in 2009, meant that policymaking and priority-set-

ting, as well as governance and control, had to be shared with an increasing number of stakeholders.

With the establishment of Europol as an entity of the Union through the Europol Council Decision, the general rules and procedures of the EU started to apply to Europol. This gave the Commission an important role in the overall governance of Europol and in the shaping of its strategic priorities. Article 88.2 of the Treaty on the Functioning of the European Union (TFEU) established the position of the Council and the European Parliament vis-à-vis Europol, as both were empowered to determine its structure, operation, field of action and tasks. This included the foundational definition of its tasks in terms of the collection, storage, processing, analysis and exchange of information, as well as the coordination, organisation and implementation of

investigative and operational action carried out jointly with the Member States' competent authorities.

Member States, the Council and the Management Board

Due to Europol's historical position as the first institutional element of third pillar cooperation, it is possible to look back through the prism of the MB to the evolution of Member States' role vis-à-vis Europol at three different levels: politically, in the Council of the EU, at strategic level in the Management Board and in Europol national units at operational level.

Under the Europol Convention, the Council, acting unanimously in accordance with the procedure laid down in Title VI of the Treaty of the EU, could instruct the MB to prepare specific Council decisions, for example requesting Europol to deal with other forms of crime listed in the Annex to the Convention, while in other cases the Council could decide following the advice expressed by the MB. In fact, in November 2000, the Europol Convention was amended in accordance with the 1999 Tampere conclusions calling for the Council to extend the competence of Europol to money laundering in general. This was later completed by the decision of the Council in December 2001 to extend Europol's competence to all the forms of international crime mentioned in the Europol Convention. However, the first practical attempt by the MB to delineate the different levels of Member States' interaction with regard to Europol came in October 2000, in the context of

a discussion on a draft MB decision on cooperation with EU-related bodies. At the time, in addition to the regular discussion on Europol at Council level, considerable cooperation existed already with different Council working groups, such as the Europol Working Group, the Police Cooperation Group, the Multi-Disciplinary Group, Cirefi and others.

Against that background, the Management Board discussed whether it would be appropriate to formalise its relationship with the Council by signing a 'cooperation agreement', also to allow the transmission of documents containing personal data through an additional agreement on confidentiality. However, it soon became clear that an agreement with the Council could not be treated the same as any other arrangement with an EU-related body. Indeed, such an agreement had to take into account existing obligations of Europol and its Management Board to report to the Council under the Convention. During the MB discussion, several Member States considered it inappropriate to establish agreements with the Council, as it was a superior body to the Management Board.

However, in the conclusions of the MB meeting in Paris in December 2000, Member States decided that any new initiative proposed by Europol or any participation of Europol in projects financed by the EU and having political implications or important consequences for the workload of the organisation, had to be approved by the MB in advance. Furthermore, the MB concluded that the development of the activities of Europol within the framework of the EU should be made in connection with a coherent policy



for all the services carrying out their activities in sectors strictly related to those of Europol.

The crude reality of security events soon made it self-evident that the Council had to take rapid decisions with a strategic, operational or financial impact on Europol, without prior consultation of Europol or its MB. Indeed, following the 9/11 terrorist attacks in the United States, the JHA Council decided on 20 September 2001 to set up within Europol a task force of counter-terrorist specialists to collect relevant information and intelligence on the terrorist threat, to undertake the necessary operational and strategic analysis and to draft a threat assessment. The conclusions of the extraordinary Council meeting ⁽¹⁾ 'instructed' the Director to

report on the input provided by Member States into the analytical work files on terrorism, together with an analysis of any problems. The Council also addressed relations between Europol and the United States, an issue already under consideration by the Management Board, inviting the Director to take all the measures necessary to make use of the possibilities afforded by the Europol Convention to establish informal cooperation with the United States and to finalise a formal agreement as quickly as possible. In fact, the Council gave the MB less than 2 months to close that file and submit a draft strategic agreement with the United States, while urging the conclusion of an operational agreement which would include the transmission of personal data. Finally, the Council entrusted the Article 36 Committee with the task of ensuring the closest possible

⁽¹⁾ http://europa.eu/rapid/press-release_PRES-01-327_en.htm

coordination between Europol, Pro-Eurojust and the EU Police Chiefs Task Force.

On 27-28 September 2001, the Director of Europol reported to the JHA Council on the measures taken and the Presidency invited the Director to report on progress at each JHA Council meeting. The Director's responsibilities towards the Council were a logical consequence of Europol's institutional set-up as an intergovernmental organisation within the wider framework of the EU. However, the Presidency's request for regular reporting to the Council created a parallel reporting line to the already existing obligations towards the Management Board.

This was not without consequences for the internal functioning of Europol. In the document "Reflection on the current functioning of Europol" submitted to the MB in October 2001, the Director pointed to a dilemma that has been facing the organisation ever since, namely the correlation between decisions made at political level and operational implementation. The Director argued that the support received at working level did not always correlate to the political commitments taken at Council level. Moreover, the political discussion did not always reflect to the fullest the practical operational needs of the law enforcement services for reaching the goals established at union-wide level.

A couple of years later, the Management Board carried out a discussion on the roles and relationships between Europol and its Management Board, on one hand, and the Council or-

gans, on the other. An ad hoc working meeting was convened on 'The role and interactions of the Management Board, CATS and the Europol Working Group', which prepared a draft Council recommendation aimed at improving the flow of information between the Management Board and the Council groups, although eventually the MB decided that a letter from its Chairman to the Council was more appropriate.

The MB was concerned that the legislative framework applicable to Europol was not always applied, in particular as Council working groups frequently asked Europol to carry out tasks originally not foreseen in its yearly work programme and budget, which in turn, had been approved by the Council upon the recommendation of the MB. The MB asked the Council to be given an opportunity to express its advice before unforeseen tasks were given to Europol.

In the post-Lisbon context and with the Europol Council Decision, the Management Board had to operate in a different environment. Europol had been transformed from a *sui generis* international organisation, part of a wider EU institutional framework, into a formal agency with an intergovernmental foundation. The Council was responsible for setting the mandate of the organisation and its basic tasks and goals, for approving many of the decisions of the MB, for example Europol's external relations and for performing a number of supervisory functions over the activities of Europol. The Commission was given MB membership. The Law Enforcement Working Party replaced the Europol Working Group and Europol was

called to participate in an increasing number of projects launched by the Commission or the Council.

At the MB meeting in December 2010, Belgium submitted a discussion paper on the role and position of the Management Board in the post-Lisbon era and an ad hoc committee was set up to look into the matter. Member States acknowledged that it was difficult for the Management Board to take a formal position towards Council working structures. MB members should rather work at national level to ensure coordination through informing and communicating with the delegates of the relevant Council working structures; Member States agreed that the Management Board should aim at striking the right balance between an effective and professional response

to Council requests and a careful assessment of such requests in terms of financial and operational impact.

Priority-setting roles: COSI and the MB

One particular aspect of the Council–MB relationship concerns the prioritisation of Europol’s action in the fight against organised crime. In September 2001, the Council had decided that it would unanimously lay down which serious forms of international crime should be given priority at Europol, on the basis of a proposal from the MB. The Council also entrusted the Director with regularly updating the MB on the implementation of these priorities. The Europol Council Decision took on board that provision in its Article 4 establishing



The MB at its 99th meeting at the Europol headquarters in May 2016

that, on a recommendation by the Management Board, the Council would lay down its priorities for Europol, taking particular account of strategic analyses and threat assessments prepared by the agency. In Article 38, the Director was assigned responsibility for informing the MB on a regular basis regarding the implementation of the priorities defined by the Council.

Priority setting became part of the regular planning cycle of Europol based on a multi-annual strategy adopted by the MB, which included benchmarks to measure whether the objectives set had been reached. Although not a formal requirement, this multi-annual strategy is normally sent to the Council for information, but it is not discussed by the Council or its working groups and does not constitute the basis for the establishment of Council priorities for Europol.

In 2010, the Council established a multi-annual policy cycle for serious and organised crime, which would be monitored by the Standing Committee on Operational Cooperation on Internal Security (COSI) created by the Lisbon Treaty. The role of COSI is to facilitate, promote and strengthen coordination of operational actions of Member States' authorities competent in the field of internal security. COSI is also responsible for evaluating the general direction and efficiency of operational cooperation and can invite representatives from Europol, Eurojust, Frontex and other relevant bodies to its meetings to help ensure consistency of their action.

At the MB meeting in December 2010, Belgium presented a proposal for the establishment of

an EU policy cycle for organised and serious crime, where Europol would play a central role. The aim of the policy cycle was to tackle the most important criminal threats in a coherent and methodological manner through optimum cooperation between the relevant services of the Member States, EU institutions and agencies, in particular Europol. The conclusions on the implementation of the policy cycle adopted by the Council on 8-9 November 2010 and the terms of reference for the European Multidisciplinary Platform Against Criminal Threats (Empact) do not foresee any formal role for the Management Board. The policy development step of the policy cycle starts with the Serious and Organised Crime Threat Assessment (SOCTA) containing an analysis of the present and future threats posed to the EU. This strategic analysis is formally presented to COSI, which examines the SOCTA-recommended priorities in what constitutes the second step of the cycle. This policy setting phase continues with the adoption by the JHA Council of the EU crime priorities for the next 4 years of the policy cycle, taking into account comments from Member States, agencies and the Commission, as well as other relevant assessments and policies. COSI took over some of the functions previously performed by other bodies such as the European Police Chiefs Task Force (EPCTF) or the Article 36 Committee. The formulation of COSI's mandate remains deliberately wide, but the Committee cannot be involved in conducting operations, which remain the task of the Member States, or be involved in preparing legislative acts. Nonetheless, COSI has emerged as a key stakeholder of Europol, which has participated in its meetings since its establishment

The EU multi-annual policy cycle

The policy cycle is a methodology adopted in 2010 by the European Union to address the most important criminal threats affecting the EU. Each cycle lasts 4 years and optimises coordination and cooperation on chosen crime priorities. The criminal threats are identified on the basis of criminal intelligence and then agreed at political level. During the cycle, all concerned services and stakeholders, at national and EU level, are invited to allocate resources and mutually reinforce efforts. Emerging threats are also monitored so that they can effectively be responded to.

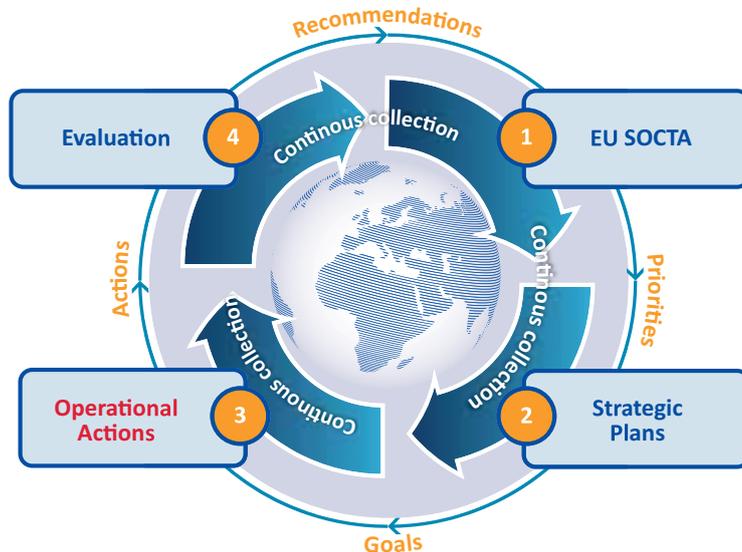
Steps of the policy cycle:

1. **POLICY DEVELOPMENT** on the basis of the EU SOCTA, prepared by Europol to provide a complete and thorough picture of criminal threats impacting the European Union and a list of recommended priorities on organised criminal groups and areas, accompanied by argument maps and guidance in the preparation of multi-annual strategic plans (MASPs).

2. **POLICY SETTING AND DECISION-MAKING** through the identification by the JHA Council of a limited number of priorities, the establishment of a MASP for each priority and the conversion of each MASP into an annual operational action plan (OAP).

3. **IMPLEMENTATION AND MONITORING** of annual OAPs on the basis of the MASPs. The relevant Member States and EU agencies implement the joint actions developed in the OAPs, making use of the framework of the European Multidisciplinary Platform Against Criminal Threats (Empact) and as an ad hoc management environment to develop activities aimed at implementing OAPs defined on the basis of the SOCTA, and to address prioritised threats of serious international and organised crime.

4. **EVALUATION** is conducted by COSI, reviewing the effectiveness of the OAPs and assessing their impact on the priority threats as an input for the next policy cycle.



and regularly reports to it on operational issues. Despite attempts to launch a reflection on how the MB could best position itself to take account of the COSI decision-making and on what role the Management Board should fulfil, the relationship between the MB and COSI has yet to be defined. It is clear that if the MB is to fulfil its role of strategic guidance to Europol, harmonisation and streamlining of the respective responsibilities will have to be tackled at some stage.

Democratic control: the MB and the European Parliament

As a consequence of its intergovernmental nature, the Europol Convention had established a duty to inform the European Parliament (EP) through a special report on the work of Europol, which the Presidency would forward to the EP on a yearly basis. In addition, the European Parliament had to be consulted in case the Convention was amended. While there was no direct relationship between the Management Board and the EP, the MB had to report to the Council, which meant that the ministers competent for police matters were subject to national parliamentary controls in accordance with the provisions of their respective constitutions. Since the setting up of Europol, the EP had pointed out the need to ensure democratic control: as early as April 1999, the European Parliament had adopted a recommendation to the Council on the extension of the powers of Europol and the strengthening of parliamentary control. The EP stated that the way in which information on Europol's activities was provided to the EP did not represent an adequate form of parliamen-

tary control. At the end of 2001, in the context of plans to increase Europol's competences to deal with terrorism, a case of mismanagement involving a Europol official and the reluctance of national police forces to transmit data to Europol, a group of European Parliament and national parliamentarians had called for increased democratic control over Europol. In early 2002, the Commission issued a communication on the democratic control of Europol, which pointed to the challenge of finding the right balance between an appropriate level of parliamentary control on the one hand and the need for confidentiality and discretion of a police organisation in order to enable it to effectively fight a dangerous form of crime on the other.

The Europol Council Decision enhanced the role of the European Parliament in the control of Europol through its involvement in the adoption of the budget, including the establishment plan, and the discharge procedure. The ECD opened the way for regular and formal exchanges between the EP and Europol, giving the EP the right to request that the Chairperson of the Management Board, as well as the Director and the Council presidency, appear before the EP to discuss matters relating to Europol, taking into account the obligations of discretion and confidentiality.

In 2011, the EP commissioned a study on the oversight of national security and intelligence agencies by the European Parliament, national parliaments and specialised non-parliamentary oversight bodies, with a view to identifying good practices to strengthening the control of Europol, Eurojust and Frontex. One key recommendation

was that the EP should not seek membership in the management boards of JHA agencies, as ultimately what mattered was that all dimensions of an intelligence agency's work were overseen by a body which was independent from the agencies and the executive.

This approach has been followed in the Europol Regulation, which does not foresee a representation of the European Parliament in the Europol Management Board, but allows the latter to invite observers designated by the JPSG established by national parliaments and the Committee on Civil Liberties, Justice and Home Affairs (LIBE) of the European Parliament. This provision develops Article 88 TFEU, according to which the scrutiny of Europol's activities shall be carried out by the European Parliament together with national parliaments through the JPSG. This new body will politically monitor Europol's activities in fulfilling its mission, including as regards their impact on the fundamental rights and freedoms of natural persons. The Europol Regulation foresees that the Chairperson of the Management Board, as well as the Executive Director or their Deputies shall appear before the JPSG at its request to discuss matters relating to Europol activities, including budgetary aspects, the structural organisation of Europol and the potential establishment of new units and specialised centres, taking into account the obligations of discretion and confidentiality. The JPSG should also be consulted in relation to the multiannual programming of Europol and should receive a number of key Europol documents for information, including threat assessments, strategic analyses and general situation reports, the results of studies

and evaluations commissioned by Europol, arrangements on cooperation with third parties and international organisations, the multiannual programming and the annual work programme of Europol or the consolidated annual activity report.

Altogether, the procedures established for the scrutiny of Europol's activities under the new Regulation take account of the need to ensure that the EP and the national parliaments stand on an equal footing, as well as the need to safeguard the confidentiality of operational information. Indeed, as pointed out by the European Parliament in the past, there is always a risk that, if oversight arrangements place too great a burden on the JHA bodies and/or national authorities, some Member States may simply revert to bilateral channels of cooperation ⁽²⁾. Any moves in this direction would undermine the capacity of the JHA bodies to contribute successfully to promoting freedom, justice and security in the EU.

In the wider EU framework, the role of the MB is to provide strategic guidance to Europol, in alignment with the political level decision-making of the Council, and, at the same time, sufficiently close to the operational realities of frontline investigators. In an increasingly complex institutional framework and threat environment, the role of the MB will be more about channeling influence rather than hoarding it and the ability of the MB to produce intended effects will progressively shift towards sharing and shaping rather than exerting.

⁽²⁾ 'Parliamentary Oversight of Security and Intelligence Agencies in the European Union' - European Parliament, Brussels, 2001

Public access to Europol documents

From the beginning, Europol's legal framework foresaw public access and a transparent management of its documents. The Convention already specified the right of access to Europol documents by the public (Article 32a). The Management Board adopted rules governing such public access. This was more than a mere technicality, since the Board needed to harmonise existing provisions with EU rules on public access to documents, while taking into account the specificities of Europol and the limitations posed by the storage of sensitive data and the agency's internal security.

With the entry into force of the Europol Council Decision, the MB had to revisit this issue. Article 45 tasked the MB with the adoption of rules concerning access to Europol documents.

Consequently, in July 2009 the MB adopted a decision regulating public access to Europol documents, which struck the balance between, on the one hand, data protection and operational confidentiality, and, on the other hand, accountability and transparency. The decision defines both the conditions and limitations of public access.

The Europol Regulation foresees that the Management Board shall adopt detailed rules for applying Regulation (EC) No 1049/2001 on public access to EU documents. The Regulation also foresees that the JPSG should have access to 'sensitive non-classified information' held by Europol. Parliamentary access will be governed by working arrangements concluded between Europol and the European Parliament.



Agustín Díaz de Mera
Member of the European Parliament

... on the working arrangements of the Management Board and the European Parliament

Since its inception through an intergovernmental Convention in 1998, the European Police Office has been expanding and improving its ability to prevent and combat terrorism and other forms of crime.

I have personally witnessed this development from three different perspectives: first, as a member of the Management Board from my position as Director-General of the Spanish National Police; then as a Member of the European Parliament, working on control and oversight of Europol's activities; and, finally, from my twofold experience as European Parliament rapporteur for the Europol Council Decision 2009/371/JHA and, more recently, as rapporteur for the Europol Regulation, which was adopted by the plenary of the European Parliament the same day as the Management Board was holding its 99th meeting on 11 May 2016. The new Regulation will replace the Council Decision and will be applicable in May 2017. Therefore, one can say I have been both controller and controlled.

Thanks to these experiences, I had the opportunity of chairing the 'trilogues' and finalised the Regulation, anchoring it in solid consensus. As a legislator, I was always motivated by the sole intention of providing Europol with the necessary

means to accomplish its tasks and mission in the most effective way.

The Europol Management Board has also evolved over time along with the Agency itself. Composed of one representative of each Member State, selected on the basis of their knowledge and experience of international police cooperation, it has among its main tasks the responsibility of proposing to the Council a list of candidates for the Executive Director of Europol and of adopting the annual and multi-annual work programmes and the budget of the Agency.

In this process of change, I would also like to highlight the transformation of the relationship between the European Police Office and the European Parliament. With the Treaty of Lisbon adopted on 1 December 2009, co-decision entered a new era and became the ordinary legislative procedure at European Union level. This has brought the legislative role of the European Parliament to a remarkable level and dramatically improved interaction and cooperation between Europol and the legislator, which not only has oversight of the agency, but has become its budgetary authority.

However, through the Regulation, the existing fruitful relationship should

evolve even further. Indeed, Article 88 of the Treaty on the Functioning of the European Union states that the scrutiny of Europol's activities will be carried out by the European Parliament, together with national parliaments. With this aim, we have established a small specialised instrument, the Joint Parliamentary Scrutiny Group. This creates a useful forum for the members of the European Parliament, as well as the Executive Director and Deputy Directors and other Europol officials to exchange views and discuss matters relating to Europol's activities. The Management Board will also be able to invite non-voting observers whose

opinion may be relevant for the discussion, including a representative designated by the JPSC. Altogether, the changes brought in by the Europol Regulation will certainly enhance the democratic legitimacy and accountability of Europol to the Union's citizens.



AGUSTÍN DÍAZ DE MERA



Luigi Soreca

MB Representative of the Commission

... on the Commission's role in the Europol Management Board

The position and role of the Commission in the governance body of the agency has evolved in tune with the institutional changes that have shaped the area of Freedom, Security and Justice.

The Treaty of Lisbon marked a defining turn in the integration process of the EU. With the end of the so-called 'pillars system' whereby criminal justice and police cooperation matters have passed from an

intergovernmental regime to one of shared competence between the EU and Member States, the Commission has become a fully fledged actor in this domain.

As security policies have continued to develop, decentralised agencies have also gained an increasing role in consolidating links between the EU and Member States and in implementing these EU policies. This, in turn has influenced the growing

strategic and operational role of Europol's Management Board.

The Commission's role in the Management Board has evolved in line with the main steps of Europol's history.

The Europol Convention

The Convention was ratified in 1998 and marked the transition from the Europol Drugs Unit to an actor with a broader mandate in supporting law enforcement authorities. Still, the Convention gave a relatively limited area of competence to Europol. The Commission took part in the meetings of the Management Board, with observer status.

The Europol Council Decision

The situation changed with Council Decision 371/2009 which transformed Europol from an intergovernmental organisation into an EU decentralised agency funded by the budget of the Union. This process illustrates the aspirations of the Union in enhancing the internal security policies. The Commission thus became a full member of the Management Board and, since then, its participation has brought a new dimension to the agency's strategic direction. On the one hand, in its capacity as policy initiator and author of blueprints such as the European Agenda on Security, the Commission contributes to the setting of Europol's strategic priorities and alignment with the EU's policy objectives. On the other hand, the Commission helps to ensure that Europol operates in full compliance with the EU's financial framework and applies the rules common to all agencies, for instance those relating to staff and to the budget.

The Commission exercises its support role through the planning and programming cycle of the agency, by helping to shape the annual work programme and by requesting from the budgetary authority the necessary financial and human resources. As a full member of the Management Board with a voting right, the Commission contributes to a more structured system of checks and balances aimed at guaranteeing that, as an autonomous agency, Europol continues to act in an accountable and efficient way.

The Europol Regulation

Efficiency and accountability are also at the core of the Common Approach on Decentralised Agencies, the interinstitutional agreement endorsed in 2012 by the European Parliament, the Council and the Commission. This agreement constitutes a model for the setting up of new agencies or for their reforms, with the aim of entrusting agencies with 'more balanced governance, improved efficiency and accountability and a greater coherence.'

This is why, when drafting the proposal for a regulation on Europol, which the Commission presented in 2013 in accordance with Article 88 TFEU, the Commission took utmost account of the guidelines of the Common Approach. This blueprint foresees close cooperation between the Commission and EU agencies on a series of matters, like the preparation of the multi-annual work programme, the development of strategies against conflicts of interest and a sound management of resources.

After almost 3 years of negotiations with the European Parliament and the Council, the Europol Regulation will be applicable in May

2017. The new legal basis entrusts Europol with the tools necessary to further enhance its capacity to support Member States in their fight against organised crime and terrorism. Furthermore, the European Parliament and national parliaments will play a substantive role in performing the parliamentary scrutiny of Europol's activities. In terms of governance, the Commission becomes an ever closer partner of the agency: it will continue to take part as a voting member in the meetings of the Management Board and it will provide guidelines for the programming documents and the definition of the agency's Staff Policy Plans; it will work with the agency for the establishment of clear key performance indicators needed for its activity reports. The Commission will also be in charge of monitoring the strategy on the prevention of conflict of interests, the implementation of audit recommendations and the action plans on the conclusions of evaluations.

A partnership for the future

Over the years, through the work of the Management Board and daily business with the agency, the ties between the Commission and Europol have grown stronger. Mutual trust and an increasingly clearer understanding of the operational requirements of the agency set against the broader picture of the EU's political priorities are key to a successful partnership which will support Europol in further enhancing its role as a criminal intelligence hub.



LUIGI SORECA

Operational support

The role of the Management Board

A direct responsibility of the Management Board in Europol's operational activities in the fight against serious and organised crime and terrorism was not foreseen by the Europol Convention, nor by the Europol Council Decision or the new Europol Regulation. This was a logical result of the division of tasks between the governing and control structures of Europol, on one hand, and its operational actors, first of all the Director, on the other. However, over its 18-year history the Management Board has actively contributed to reinforcing Europol's ability to provide operational support to Member States' investigations. It has done so by providing strategic guidance on the implementation of Europol's mandate and tasks, but also by adopting numerous decisions of a legal, technical or financial nature, which directly or indirectly supported Europol's operations. Particularly during its early years, between 1998 and 2002, the Management Board played a key

role in establishing and adapting the relevant operational support structures and capabilities of the agency, including the development of its information processing architecture, the initiation and implementation of analysis work files, the improvement of intelligence flows, advising on the extension of Europol's mandate to deal with serious forms of international crime, determining the rights and obligations of liaison officers in relation to Europol or by setting priorities in the area of Euro currency activities, the fight against drugs, counter-terrorism, illegal immigration or trafficking in human beings.

When Europol was established, it not only took over from the Europol Drugs Unit, but it developed as a unique centre for European law enforcement cooperation with its own tailor-made governance mechanisms. Consequently, a main challenge for the Management Board was to ensure an adequate division of tasks and roles

within Europol for the smooth functioning of the organisation and the fulfilment of its mandate. This required a delicate balancing act between policymaking and control at strategic level, and the specific needs of law enforcement activities at operational level. This is well reflected in the Management Board discussions on the role of and its relationship with the HENUs.

The relationship with the heads of Europol national units

The Convention established that the Europol national units would be the only liaison bodies between Europol and the competent national authorities. Their tasks and competencies were outlined in Article 4 and consisted of supplying Europol, on their own initiative, with the information and intelligence necessary for the organisation to carry out its tasks; responding to Europol's requests for information, intelligence and advice; keeping information and intelligence up to date; evaluating information and intelligence in accordance with national law and transmitting it to competent authorities; and issuing requests for advice, information, intelligence and analysis to Europol. To this day, the Europol national units and the extensive network of Member States' liaison officers deployed at the headquarters represent the interests of national law enforcement authorities towards Europol.

The HENUs were required by the Convention to meet regularly to discuss operational activities and to assist Europol by giving advice.

Yet, their competences had not been explicitly delineated. In order to avoid potential overlap and duplication, in February 1999, the Management Board discussed a proposal from the HENUs on their role in respect of the MB. The outcome was that the HENUs should play an advisory role with a clear focus on technical and operational matters. It was decided that the MB would closely coordinate with the HENUs on these aspects and would invite their Chairman to give advice when subjects discussed at MB meetings so required.

The Europol Council Decision built on the practice established by the Management Board of entrusting the HENUs with regard to operational advice, thereby separating operational from strategic oversight. Article 8 of the ECD clearly tasked the Europol national units with technical and operational matters. It also laid down the basis for a close relationship between the HENUs and the MB with regard to operations confirming that the HENUs would meet on a regular basis to assist Europol on operational matters, on their own initiative or at the request of the Management Board or the Director. In particular, the HENUs were requested to consider and develop proposals to improve Europol's operational effectiveness and encourage commitment from Member States; evaluate strategic reports and analyses drafted by Europol; and provide support in the establishment of joint investigation teams involving Europol.

This administrative arrangement is also well reflected in Article 7.9 of the Europol Regulation, which foresees that problems occurring

in the context of operational cooperation between Member States and Europol should be discussed in the meetings of HENUs.

The HENUs continue to advise Europol as a whole on a number of matters related to operational support or strategic planning, for instance on the preparation of work programmes, priority-setting, and the evaluation of projects and products. A recent example is the development of an integrated data management concept, as foreseen in the Europol Regulation. In order to decide upon the operational principles and design of such a concept the MB is closely liaising with the HENUs so as to construct an IDMC that provides an adequate legal and technical basis for Europol to perform its operational and other support activities.

Counter-terrorism: the MB role

The fight against terrorism was already part of the expanded mandate of the Europol Drugs Unit and became part of Europol's mandate in the Convention and in subsequent legal frameworks. However, the terrorist attacks against the United States on 11 September 2001 put counter-terrorism at the top of Europol's agenda. Following the Justice and Home Affairs Council on 20 September and the extraordinary European Council meeting on 20-21 September 2001, counter-terrorism, as well as cooperation between Europol and the United States, became a recurring item on the Management Board agenda. Accordingly, the Board fast-tracked the conclusion of a strategic cooperation agreement with the United States, followed

by an operational agreement in 2002 to enable the exchange of personal data.

The first Management Board meeting following the 9/11 attacks was held on 23-24 October 2001 and expressed its support for the draft agreement with the United States, although France and Germany recorded scrutiny reservations, while the United Kingdom and the Netherlands recorded parliamentary reservations. The meeting also endorsed plans for the establishment of a Counter-Terrorism Task Force (CTTF), which became fully operational on 15 November, bringing together experts and liaison officers from Member States police and intelligence services. Working closely together and with external authorities, the Task Force and Europol's own staff proved effective, providing useful analysis work and intelligence. The task force model remained under regular review and in an evaluation report issued at the end of 2002, the Management Board emphasised the good results achieved by the CTTF and the continued importance of counter-terrorism activities in the EU, recommending to the Council to transfer the relevant ad hoc CTTF activities into the permanent structure of Europol. Throughout 2003, the MB was largely involved in assessing budgetary implications of the counter-terrorist action plans proposed. When the CTTF's mandate expired, Europol's Serious Crime Unit took on counter-terrorism work.

Following the Madrid attacks on 11 March 2004, the Management Board met on 1-2 April and discussed counter-terrorism issues in considerable detail, starting with the declaration adopted by the JHA Council on 25 March and

the European Council on 29 March with a view to accelerating Member States action. Europol presented a document on the structure and profile of the Counter-Terrorism Task Force, which was to be re-established. The Council Declaration mentioned that the Europol Information System (EIS) should be completed and, to this end, advice was needed from the Management Board. One of the problems identified was that Europol had to process a considerable amount of information, which caused backlogs. However, the EIS remained the only database on suspects, contacts and communications able to link investigations at EU level and provide a situation overview and a platform to reach all Member States at once. Another issue was the obligation under the Convention to delete data after the 3-year deadline for data storage. A solution had been envisaged by means of a Protocol amending the Convention, but Member States had yet to ratify it to allow for prolongation of the deletion of data.

Accordingly, the Management Board discussed the re-establishment of the CTTF with special emphasis on its structure, mandate, financial and other implications, as well as the reinforcement of Europol's counter-terrorism capacity and how to improve the flow of information and the links with the intelligence services. Following the meeting, the Management Board issued conclusions on counter-terrorism which reflected the terms of the agreement reached: the CTTF should be established within the existing structure of Europol taking account of the intelligence-led policing model and following a project-based approach, as opposed to widening its scope; it should focus on Islamist

terrorism and produce threat assessments with a view to prevention, profiling and operational analyses; support Member States' investigations including joint investigation teams; prepare strategic analysis, including in coordination with the Council Situation Centre (now EU Intelligence and Situation Centre — EU INTCEN). Member States would contribute up to 30 officers to the CTTF with a specialised counter-terrorism profile.

The Management Board focus on counter-terrorism continued over the years and following the terrorist attacks in France and Denmark in 2015, the issue has become a regular item for discussion in most meetings. On 20 November 2015, the JHA Council adopted specific conclusions on counter-terrorism, following the wave of terror attacks in Paris on 13 November 2015. The conclusions stated that 'Europol will launch the European Counter Terrorist Centre (ECTC) on 1 January 2016 as a platform by which Member States can increase information sharing and operational cooperation with regard to the monitoring and investigation of foreign terrorist fighters, the trafficking of illegal firearms and terrorist financing.' Whereas Europol and the HENUs shouldered a majority of the operational and structural design of the ECTC, the Management Board was closely involved in the planning and helped move the implementation plans along swiftly. Expectations towards Europol are especially high, as the ECTC is expected to make a difference in the fight against terrorism in terms of information and intelligence collection and cross-border investigation and operational response.

The MB and the EU Most Wanted List

Plans for a ‘Europe’s Most Wanted Fugitives’ website date back to April 2012, when Europol — as an active supporter of the European Network on Fugitive Active Search Teams (Enfast) — was approached by the Enfast working group with a proposal for hosting a public ‘EU Most Wanted List’ on Europol’s website. Various options for implementation of such a list were drawn up and Europol and its Data Protection Officer had initial exchanges of views with the Joint Supervisory Body throughout 2013.

The envisaged website was to comprise up to two ‘most wanted’ persons per Member State, subject to a valid European Arrest Warrant (EAW) or to a national announcement of a public search based on a judicial decision. According to the proposal, Member States would remain the owners of the published data and be ultimately responsible for the content of the website. Nevertheless, there were some initial concerns that the public nature of the

proposed service would not be within the possibilities of Europol’s legal framework, and that it would necessitate a request for a new system under the ECD.

Europol sought the advice of the Management Board concerning steps to be taken to pursue this new operational initiative in October 2014. Europol suggested that there was an implicit legal basis as the matter was within its tasks and objectives. The Management Board supported the initiative in view of its operational benefits and authorised its establishment taking account of the right balance between operational and data protection interests.

The website was launched on 29 January 2016 and received wide attention immediately as it had 1 million visitors only on its first day of operation and has since then generated several investigation lines. Six months after the launch 14 fugitives on the EU Most Wanted List had been located and arrested.



Regular operational and coordination meetings take place at the Europol headquarters in The Hague throughout the year, including joint action days, investigation teams, taskforces and other operational actions to support EU Member States

Euro counterfeiting

Europol's activities in the field of combating euro counterfeiting go back to its early days. During its initial meetings the Management Board discussed the extension of the Europol mandate to include counterfeiting of currency and other means of payment. In this context, the MB was tasked to assess the budgetary and staffing implications resulting from such a new competence and to prepare a Council decision.

When the euro came into existence in 1999 — and started circulating within Member States by 2002 — the need for combating counterfeiting of currency, particularly the new common currency, seemed more pressing than ever. Europol's mandate was extended on 1 July 1999 and a 'Forgery of Money Group' began its work on counterfeiting of all currencies with an initial main focus on the euro.

Yet, the beginnings of Europol's currency and euro counterfeiting mandate faced a number of obstacles. For instance, the MB had to clarify the division of roles with Interpol and other actors to avoid a duplication of efforts between Europol, the European Central Bank (ECB), the Commission and the European Anti-Fraud Office (OLAF).

By 2001 a euro counterfeiting database had been created and counterfeiting of money had become one of Europol's top priorities. A strategic cooperation agreement with the ECB had been authorised by the MB in December 2000 and was concluded at the end of 2001. Other relevant partners were the third States parties to the Single

European Payments Area (a payment-integration initiative of the European Union for simplification of bank transfers denominated in euro), such as San Marino, Iceland, Norway, Switzerland, or Liechtenstein.

However, it was not until 2005 that Europol became the EU's Central Office for combating euro counterfeiting. In September 2004, the ECB decided to discontinue funding Member States' operational activities in the field of euro counterfeiting as of 2006, thereby cutting off its financing of Europol's work. The MB was responsible for deciding how Europol should proceed in this situation, as alternative scenarios and solutions were discussed throughout various meetings. Since there was agreement that criminal activity involving euro counterfeiting remained important to tackle, the MB concluded that new means of funding had to be found and that they should come from Europol's own budget. Until Europol was able to do so, a temporary financing agreement was concluded with the ECB that allowed the organisation to carry out its operational activities in this area.

A turning point was reached in July 2005, when the Council designated Europol as central contact point for euro counterfeiting in the EU and for the entire world. Today, Europol is involved in major euro counterfeiting investigations in the EU and beyond, including as an EU information hub for the collection and exchange of criminal intelligence, as provider of technical and forensic support, of training and as facilitator of international cooperation.

Private parties

With the Europol Regulation, Europol gains greater flexibility and new opportunities for cooperation with private parties and academia. Under the Europol Council Decision, the MB played an important role for Europol's relations and cooperation with private parties. It was for the Board to determine and review a list of private parties with which Europol was allowed to conclude Memoranda of Understanding (MoUs). In 2010, the MB further laid the foundation for Europol's cooperation with private parties by deciding on the rules and procedures governing the receipt of information. Europol's cooperation with the private sector increased significantly through the unprecedented possibilities resulting from the ECD, and particularly following the launch of the European Cybercrime Centre (EC3). Contacts with private parties were established at operational and strategic levels, most notably in the fields of

cybercrime, payment card fraud, financial crime, euro counterfeiting and intellectual property crime.

By mid-2016, Europol had concluded MoUs with more than 30 private parties, including from academia, the internet security industry and the financial sector. The Management Board has been involved in the review of Europol's cooperation with private parties through periodic updates. In line with its role of safeguarding adherence to standards, in 2014, the MB asked to be more closely involved in the conclusion of MoUs. This case-by-case control function concerning MoUs with private parties will cease once the Europol Regulation comes into force. Satisfying a number of conditions, Europol will be allowed to process personal data received from any private party and may even transfer personal data to private partners in individual cases.



Mariano Simancas Carrión

MB Member for Spain and Europol Deputy Director, 2001-2009

... on the evolution of Europol and operational support

When I received the invitation to contribute to the publication commemorating the 100th meeting of the Management Board of Europol, my mind sprang immediately back to April 2000, when I joined the Agency as head of its Counter Terrorism Unit, and to many of the memories I treasure of what has been a long, challenging, fulfilling and yet unfinished journey that has certainly marked my professional life.

While its overall purpose and service-oriented approach remain the same, today's Europol has little to do with the one I found in 2000. The most conspicuous differences are its new headquarters, a state-of-the-art four-tower building in contrast to a smaller but cosy old building that was prepared to welcome far less of what constitutes the other of the major differences: its people.

Shortly after joining that incipient Europol, I realised that its staff, liaison officers and personnel working under different contractual arrangements constituted a sort of family tied by professional but also personal bonds that kept growing stronger over time.

With its household in The Hague that Europol family of ours also included important members who, representing the Member States in different organs, groups or committees, were only present at the headquarters at regular intervals. For obvious reasons Europol's policymaking body, the Management Board, always stood out amongst those organs and committees.

Some of the Board members I met in 2000 remained in office during my tenure as Deputy Director for Operations and that of Acting Director and even continued for a few more years after I left Europol at the end of 2009; others had shorter but equally enriching experiences and left either before or after I did to assume different responsibilities. Too many names and faces come to my mind to dare mention just some...! Their statements and at times strong interventions during Board meetings always provided me with an opportunity to appreciate better the needs, expectations, wishes or even frustrations of the respective Member State with regard to the operational support provided by Europol. A frank and sometimes passionate exchange of views not only during Board meetings but also — and perhaps due to being more at ease and thus with more clarity — in their margins, helped us define together, maybe slowly but certainly steadily, a vision for the Europol we wanted to build. With my input to this publication I wish to pay tribute to all those colleagues, friends, family in a way, with whom I had the privilege to navigate an important part of Europol's journey.

Apart from its astounding headquarters and threefold numbers of personnel, the third main difference I noticed upon my return to Europol in 2015 as the Management Board member for Spain was a widened set of operational products and services offered by the Agency through the so-called 'European

Centres': for Cybercrime, Migrant Smuggling, Counter Terrorism and, shortly, Organised Crime.

When Europol was conceived and became operational in the nineties as the so-called 'EDU', Spain insisted firmly on the need to include the fight against terrorism amongst its areas of competence. What may seem self-explanatory today was not so easy to determine at the time, and only much work at different levels led to a Europol Convention that finally included terrorism amongst Europol's areas of competence.

The hideous terrorist attacks of 11 September 2001 would soon prove that the decision had been the right one. The EU Council reacted swiftly through the establishment of the first Counter-Terrorism Task Force, a decision shortly thereafter implemented by the Management Board. Although not exempted from the difficulties inherent to any untested attempt, the CTTF constituted a good illustration of the need to confront a global threat in a coordinated manner.

However, increasing doubts concerning the validity of the model led to its closure shortly after 2 years of existence. Such doubts were abruptly dispelled on 11 March 2004 by the terrorist attacks in Madrid when the Management Board re-established the CTTF. Updates on Europol's support to the fight against terrorism became a constant item on the agenda of Management Board meetings and decisions were taken in order to step up Europol's contribution thereto. The elaboration of the EU Terrorism Situation and Trend (TE-SAT) report became, along with the then Organised Crime Threat Assessment (OCTA), one of Europol's flagships in analytical terms.

The focus on counter-terrorism only increased with the terrorist attacks in London on 7 July 2005. Again the Management Board, relying on Europol's assessment and advice, was instrumental in setting up the First Response Network, a group of counter-terrorism experts who would receive the necessary training and remain available, from their respective countries, in case it would be necessary to provide operational support to a Member State hit by a terrorist attack.

As has been the case with the different Europol reorganisations — certainly on what concerned the Operations Department I led for almost a decade — the decisions concerning the shape of the units and the related focal points were submitted to and endorsed by the Management Board.

Everything in life is in constant movement and, as I began noting, the Europol of today has little to do with that of 2000. However, amidst this constant movement Europol has always benefited from a Management Board which, varying in size and seeing members come and go regularly, has provided the strategic and operational guidance the agency needed and, in doing so, has made a decisive contribution to Europol's evolution throughout the last 18 years — and its first 100 meetings!



MARIANO SIMANCAS CARRIÓN



Gennaro Capoluongo
MB Member for Italy

... on the evolution of Europol and the MB alongside European counter-terrorism approaches

Criminal and terrorist threats facing the European Union and the whole world have reached a global dimension and are becoming increasingly insidious and 'migmatic', thus jeopardising the safety of all citizens.

More sophisticated counteractions and advanced specialisation of law enforcement forces are needed in order to detect and combat criminal infiltrations that pervade and undermine the healthy foundation of our societies, as well as the economic and political systems of our countries. In addition, a range of state-of-the-art tools should be made available to be able to operate effectively and rapidly adjust to changes in the criminal landscape.

Terrorism, especially 'Islamist terrorism', has proved its ability to pursue destabilisation by staging particularly violent attacks, as confirmed by recent events, while organised crime has evolved and turned into an international business enterprise combining its rigid hierarchies and control over the territory with 'variable-geometry' operational schemes, thus being extremely adaptable to changes.

The need to develop countering strategies that go beyond the national borders requires the adoption of common intervention strategies resulting from a synthesis of best practices, as well as investigative and legal tools which

prove to be the most effective ones based on the experiences of our countries.

Against this background, Europol plays a crucial role in acting as a cohesive and driving force with a view to enhancing cooperation between our law enforcement agencies, providing them with a secure and effective platform to exchange information, analyse different criminal phenomena and share the most effective operational strategies.

Dialogue and operational synergy, as a 'means' to counter transnational criminal threats, have proved to deliver real added value and an incentive to further stimulate cooperation between our law enforcement agencies.

In my capacity as Chairperson of the Management Board (1 July 2014 to 31 December 2015), I witnessed that Europol is a privileged channel for pursuing shared approaches and models as well as for fostering a network of virtuous relationships that makes it possible to fully benefit from the absence of unilateral views and approaches in a context that, due to the transnational nature of the criminal threat, cannot remain confined to the realms of national sovereignty.

In the framework of security priorities, Europol continues to show its ability to identify the necessary responses, also as

a result of its capacity to build efficient partnerships with third countries and initiate integrated operational dynamics, in addition to delivering high quality information sharing and analyses for prompt and effective investigations.

During my mandate, I had the privilege to contribute to the internal governance of the agency, devoting special attention to identifying the new priorities and finding the necessary financial resources, along with choosing experienced professionals who could benefit the proper institutional functioning of the agency.

Within the framework of the relations with the EU institutions, notably with the Commission and the Council, I witnessed the major contribution made by the Management Board for the approval of the new Regulation, which will become applicable on 1 May 2017, and also for the development of the Europol strategy that has now reached a degree of maturity that encourages a reflection on future commitments, in view of the recent serious criminal phenomena which require effective and, above all, flexible countering schemes.

Among models of proven effectiveness followed by the agency, which I strongly support, there are the newly established European Migrant Smuggling Centre and the European Counter Terrorism Centre as well as the European Cybercrime Centre.

In the field of terrorism, in particular, it has now become clear that effective counteraction against terrorism shall not only be focused on monitoring financial flows and online radicalisation, but also on preventive

protection of vulnerable communities by means of intervention models which take into account the interconnection between terrorism and other forms of crime.

In this respect, the experience gained with the First Response Network shows how beneficial it is to envisage the possibility for counter-terrorism experts to be supported by experts in other fields, including illegal immigration, so as to create a sort of multi-functional platform of national experts, to be set up by Europol in special circumstances, as has already been implemented *inter alia* with the recent introduction of guest officers deployed in risk areas.

In light of the above, it would be appropriate to support, through the mediation of the agency, the creation of a collective and supranational body to counter-terrorist threats, similar to the successful Italian experience (the Committee for Strategic Counter-terrorism Analysis, C.A.S.A.), for the purpose of facilitating the information exchange between the European law enforcement agencies and the various intelligence agencies.

I strongly believe in the pivotal coordination role played by Europol and I am convinced that, in the near future, the level of effectiveness of common security strategies will depend on our capacity to reshape the partnerships among Member States through a permanent dialogue, consistent with the challenges to be faced.



GENNARO CAPOLUONGO

Administrative and financial tasks

The role of the Management Board in Europol's everyday business

In order to uphold the legal framework and priorities established by the legislative and political authorities, governance and oversight functions have to rely on a consistent technical basis, so as to ensure sound and effective decisions. In this regard, since its establishment, the Management Board has supported and steered the development of Europol through a closely-knit fabric of legal and administrative provisions.

Particularly under the legal regime provided for by the Europol Convention, decision-making was the outcome of negotiations held by the Board members through debates that reflected different cultures and experiences and, thereby, contributed to the emergence of a distinct yet coherent body. Still today, the Management Board is accountable to, on the one hand, the operational and organisational needs of law enforcement and Europol and, on the other hand, legislators and policymakers.

Over the years, the Management Board has balanced these often competing demands by carrying out and ensuring administrative tasks, including in relation to personnel matters, management control, strategic governance, the work programme and general working procedures. Next to a strong involvement in the establishment, review and adjustment of Europol's procedures and activities, the MB had to manage the evolving institutional roles and responsibilities in response to changing expectations placed on a growing organisation. The challenge of having at the same time to embrace, reduce or integrate the complications of a European Police Office with many associated partners, bodies and sub-entities, coupled with a constant increase of incoming information flows and new demands, is no doubt one of the MB's major tasks. This can likewise be said for the Board's financial responsibilities, including in the continuous planning, monitoring and adjusting of the budget

and financial plans in relation to the evolution and needs of Europol. In this regard, the Management Board has developed and relied since the beginning on procedures and processes that have allowed Europol to start its activities, grow as an organisation, implement its mandate and deliver results to Member States.

Work programme and budget

The responsibility held by the Management Board in respect of the annual work programme, which is drawn up taking into account Member States' operational requirements and staffing implications for Europol, is accompanied by the task of drawing up the budget on the basis of a draft prepared by the Director.

Under Article 28.1(15) of the Convention, the Management Board was requested to take part in the drawing up of the budget, including the establishment plan, the auditing and the discharge of the Director. The Management Board had to provide its opinion on the draft budget and submit it to the Council, which was to adopt the budget unanimously by 30 June of the year preceding the financial year. This procedure implied both political and administrative complications for Europol and its Management Board.

Work programme and budget preparations started well before the first draft budget was submitted to the Management Board with the effect that usually more than 1 year lapsed between planning and implementation.

Under the Convention, the Management Board relied on two organs to implement its financial responsibilities: the Financial Committee, comprised of Member States representatives, had an advisory role concerning budgetary and financial matters; the Financial Controller, appointed by the Management Board had the responsibility of verifying the legality and regularity of revenue and expenditure.

Since the budget of Europol was financed solely by Member States, financial discussions and negotiations took place throughout the meetings held during the initial months of every year, thus making the 'first semester' Presidency a challenging exercise for the Chairmen of the different organs as well as for Europol staff.

A strong interaction and exchange of information took place internally and among the capitals, particularly on the occasion of last-minute amendments on supplementary budgets required by unexpected events such as 9/11 or the terrorist attacks in Madrid.

The entry into force of the ECD shifted the financial responsibility of the Management Board towards control and oversight with a focus on strategic guidance, particularly given the new role of the Commission and the Council and European Parliament as budgetary authority.

Europol's subsidy

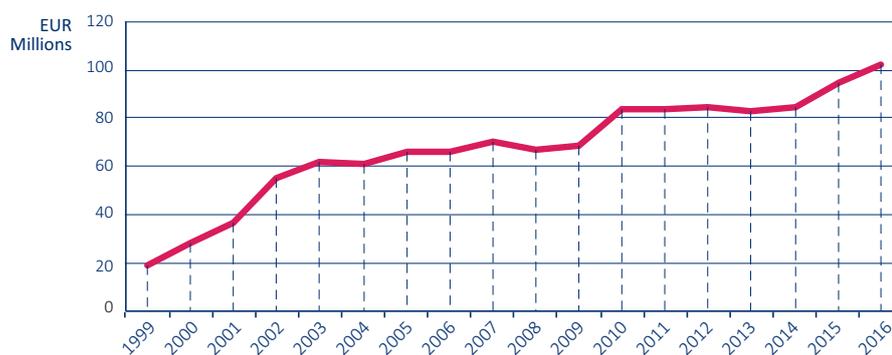
Despite the continuum between Europol and its predecessor, the Europol Drugs Unit, many arrangements had to be made for the smooth functioning and institutional set-up of the new fully fledged European Police Office. The Management Board played an important part in this phase of preparing and executing the implementation of the Europol Convention, thereby deciding on Europol's precise organisational structure.

One of the early key questions to be solved was, unsurprisingly, the financial arrangements. While the EDU had operated on an annual budget of around 6 million ECU (European Currency Unit), Europol's budget in 1999 was set to EUR 15.7 million. It was the result of difficult discussions in the MB, including exhaustive debate on the organisation's first Five-Year Business and Financing Plan. A large share of the MB's work at that time was absorbed by evaluating planning and budget processes, and lengthy negotiations took place internally as well as with the Council among others.

This was in itself an essential task, as the range of Europol's activities and involvement quickly increased and left the organisation in need of a larger allowance. Consequently, the MB had to regularly review and adapt the annual budget, which is reflected in its swift expansion over the following years. Whereas Europol already had twice the budget of the EDU at its disposal in 1999, the budget had more than tripled by the year 2002, for which Europol was granted a total of about EUR 48.5 million.

For the organisation to function the way its Member States had foreseen, the MB had to monitor Europol's rapidly growing activities and accordingly adapt the annual budget and the specific resource allocation. Strategic priorities set by the MB in those early days included the financing of information and communication technology and analysis activities. In 2016 the revenue assigned to Europol amounted to EUR 102 million (EUR 685 000 for the Management Board and its working groups).

Europol's Annual Budget



Staffing matters

In addition to finances, the Management Board has also dealt with human resources issues since the very beginning, discussing and adopting legal and administrative acts that affected a large range of topics. While the Europol Staff Regulations were adopted and amended by the Council taking into account the Management Board opinion, the Board would approve the list of Europol posts, the rules governing the liaison officers, those on the personal files and assessment of staff, or the proposal to adjust salaries and remunerations.

An expert group — the Personnel Experts — assisted the Management Board in dealing with these and other human resources issues, thereby allowing Europol to develop a unique set of legislation which stood the test of time and the complexity implied by a structure including local and international staff, restricted and open posts, different contract durations or social security benefits tailor-made to meet very different situations.

Upon the entry into force of the ECD, the legal and administrative framework changed also in respect of personnel matters and in recent years, apart from the selection procedures for the Director and Deputy Directors, one of the most relevant issues discussed by the Management Board has been that of indefinite contracts.

The Management Board has also acted as a 'recruitment agency' for the senior management of Europol: since the first selection held in 2001, the Board, through duly established committees, has carried out 11 selection procedures for the appointment of two Directors and nine Deputy

Directors, thereby ensuring continuity of the senior management.

It is interesting to note that among the 11 individuals eventually appointed by the Council only four had been previously associated to the work of Europol, while the remaining seven had no direct involvement with the Management Board or, in some cases, Europol itself. This may bear witness to the fairness of the procedures, as well as to the independence of judgement and open-minded attitude of the selection committee and the Management Board members.

On the other hand, it is regrettable that, so far, no woman has been appointed as a senior manager at Europol. While gender balance has been discussed several times by the Management Board, it is high time to demonstrate that action follows words also in this area. In May 2016, the Management Board discussed a study conducted by the European Institute for Gender Equality on gender balance in management and governing boards of EU agencies. Compared to the relatively static representation of women in other EU agencies' management boards over the last years (below 30 %), the female percentage in Europol's MB in June 2015 was 22.2 %. The Management Board agreed that it was important to take action in this regard, not least because Article 13 of the Europol Regulation explicitly includes the principle of balanced representation between men and women on Europol's Management Board. Additionally, Member States concurred that the related issue of under-representation of women at Europol should be addressed as well, in particular at senior and middle management level (3.6 % women in such positions, against 32.8 % women as part of the total staff).

Staff levels

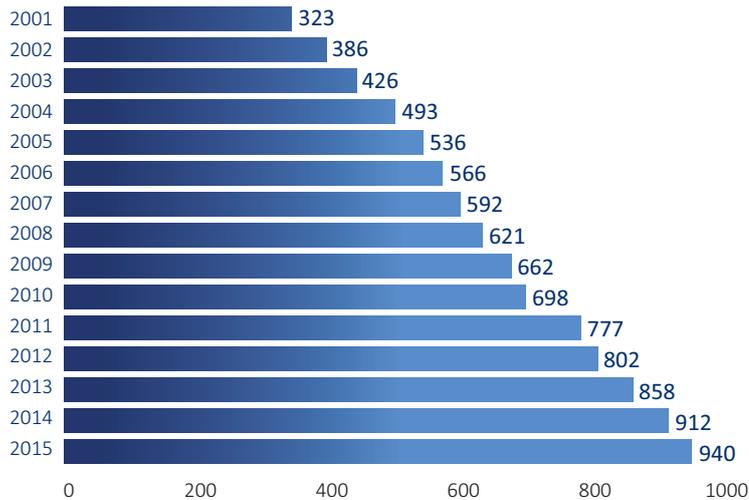
Albeit one of the less visible aspects of the Management Board's history, staffing arrangements played an essential part in the growth of Europol. In fact, a Council declaration from September 1998 stated that 'In view of the present and future tasks of Europol, the Council considers that a substantial

increase of Europol personnel in the coming years will be necessary.' In this respect ... EDU ... foresees a significant and regular increase by the year 2003.'

Indeed, Europol's success led to a significant increase in staff numbers well beyond 2003 and — within 15 years — staff had grown by almost 300 %.

Europol Staff Numbers

Including staff with employment contracts with Europol, Liaison officers from Member States and third states and organisations, Seconded National Experts, trainees and contractors.



Paving the way for the future

With the adoption of the Europol Regulation, Europol will formally transition to its new legal framework as of 1 May 2017. As had been the case for the Europol Convention and the Europol Council Decision, administrative and financial acts will have to be reviewed, amended, created or replaced, and ultimately adopted by the MB.

While it will not be as comprehensive an undertaking as the transition from the Europol Convention to the ECD, which included substantial and profound changes in order to fully integrate Europol into the EU political and legal environment, the MB will face a number of additional implementing tasks. Among them are the establishment of new decision-making processes for Europol's external relations or

procedures for relations with the Joint Parliamentary Scrutiny Group or the European Data Protection Supervisor, Europol's new data protection authority. Other issues, not directly related to the new legal framework, include dealing with the rapid growth in staff numbers and the optimisation of work and office space at the headquarters, and ensuring an adequate administrative and financial capacity for Europol to carry out its activities and meet the increasing demand for support, for instance in matters related to terrorism and facilitated illegal migration.

Albeit no small task, the MB can draw from the experience of its first 100 meetings and has been preparing the implementation of the Europol Regulation together with its Working Groups on ICT and on Corporate matters.



Jean-Jacques Colombi
MB Alternate Member for France

... on the MB's role in the expansion and evolution of Europol

Since 1 October 1998, the implementation date of the Europol Convention, the Management Board has gone along with the agency, followed and participated in all its developments.

As an internal body, the Management Board was not meant to become a leading decision-maker. But, by establishing itself as the strategic governance authority of the agency, by participating in the development of the working programmes and strategies it validates, it has become, with its representatives, one of the main actors in the expansion of Europol.

The successive Directors did not hesitate to resort to its expertise and look for its support.

The Management Board is, at the same time, an organ of decision, surveillance, control and advice, but above all, its representatives have been, and still are, leading actors boosting, at national level, a culture of sharing, exchange and collaboration with a concrete and operational aim.

If Europol has become a flagship institution of the European Union and is poised to succeed in being the European hub for the exchange of information and for police cooperation, it is also thanks to the members of its Management Board, convinced and determined; those members

who constantly put forward the idea and the implementation of true and pragmatic European police cooperation, turned towards the field actors, being either heads of departments, investigators or forensic police technicians.

Europol is an undisputable success and the healthy and dynamic spirit present within the agency also exists in each member of the Management Board. Beyond its institutional work, the Management Board is inherently an actor in international police cooperation. Its members, deeply involved and making every endeavour in their mission to serve the citizens of the Union, never fail to assist to implement a common action. They never hesitate to intervene to smooth away or resolve problems when international cooperation is needed on the occasion of serious events or when the cooperation turns out to be difficult to implement. The success of the Management Board is also due to the mutual respect shared by its members, trusting each other while at the same time serving their national directorates, both catalysts and facilitators.

The Management Board has never failed to support the agency, backing it, passing its needs and successes to national decision-makers. Its members are, at the same time, the guarantors of its choices and

PERSONAL HIGHLIGHTS

Jean-Jacques Colombi

orientations and its ambassadors at national, European and international level.

Following the enforcement of the Europol Regulation, the Management Board will pursue its involvement in the development of the agency, allowing it to maintain its expansion as a leading actor in international police cooperation and remain a reference. Its members will continue to show their sense of duty and service to the profit of every European citizen. Despite the likely evolution of its role, the Management Board will go on gathering women and men who are, in their own countries, at the heart of action of law enforcement agencies. It will therefore remain, for Member States, the guarantee of the operational legitimacy of their actions, in particular as far as the technical control carried out before taking any decision is concerned.

I have had the honour of representing my country at the Management Board for 5 years. A membership I am proud of, serving both European investigators and the Europol agency whose evolution moves deeply and in a positive way the police cooperation paradigms into a model that has, currently, no equivalent worldwide.



JEAN-JACQUES COLOMBI

Cooperation and partnerships

Outreach activities of the Management Board and Europol's external relations

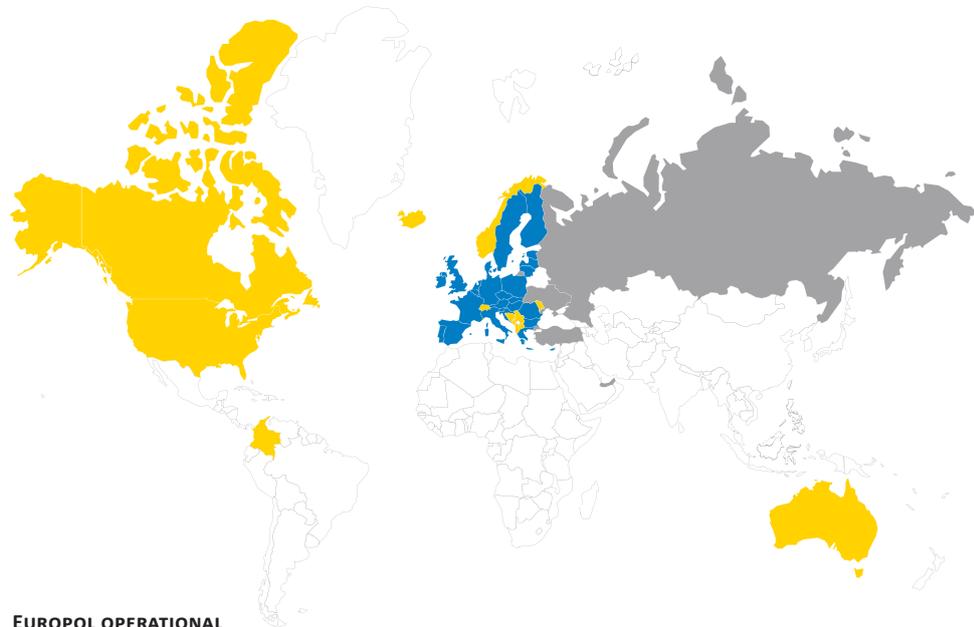
In an age of interconnected global threats, European security is as much an external matter as it is an internal one. Europol has come a long way since it was established, especially with regard to its international standing. Today, it is globally recognised and neatly embedded in a vast network of EU-level and external third-party partnerships, including with international organisations and private parties. The Management Board has played an important part in this process, most notably in providing strategic guidance on cooperation agreements with over 30 partners to date.

Evolution of cooperation agreements

The Convention allowed Europol to establish and maintain cooperative relations with third States and organisations and requested the Management Board to draw up rules governing such relations, listing the possible partners,

including EU bodies and the International Criminal Police Organization (Interpol). The rules for the communication of personal data by Europol to third States and international organisations were determined by the Council, on the basis of a decision prepared by the Management Board, having consulted the Joint Supervisory Body. The Convention did not refer to the type of cooperation agreements Europol could sign with partners, but established different sets of rules for the transmission of personal data to external partners and for the transmission of non-operational data. These rules were developed by the Management Board during its first meetings in October 1998, laying the basis for a system of external relations that has fundamentally contributed to Europol's work for more than 18 years.

Under this system, strategic cooperation agreements allowed for the provision of training and the exchange of strategic and technical information only, whereas operational cooperation



EUROPOL OPERATIONAL AND STRATEGIC PARTNERS

- 28 EU Member States
- OPERATIONAL AGREEMENTS: Albania, Australia, Canada, Colombia, Bosnia and Herzegovina, Eurojust, former Yugoslav Republic of Macedonia, Frontex, Moldova, Montenegro, Iceland, Interpol, Liechtenstein, Monaco, Norway, Serbia, Switzerland, USA
- STRATEGIC AGREEMENTS: CEPOL, ECB, ECDC, EMCDDA, ENISA, EU INTCCN, EU-LISA, European Commission, OHIM, OLAF, Russia, Turkey, Ukraine, United Arab Emirates, UNODC, World Customs Organisation

agreements made the exchange of personal data possible. The new outreach possibilities were a clear success as 7 operational and 10 strategic cooperation agreements had been signed, ratified and entered into force by the end of 2004, that is 4 years after the Europol Director was authorised by the JHA Council to enter into negotiations with partners. These partners had been selected in line with Europol's rapidly emerging priority crime areas, giving precedence to EU accession candidate States. New partners included, in the area of drugs, EMCDDA and the

United Nations Office on Drugs and Crime; in the area of terrorism, the United States and Interpol; and in the area of counterfeiting, the ECB and OLAF. Although the role and responsibility of the MB in Europol's external relations had yet to be clearly delineated, the Board provided momentum to Europol's early outreach activities, as illustrated by several ad hoc meetings on partnership issues and rapid progress with regard to cooperation agreements and the development of a strategy for Europol's external relations.

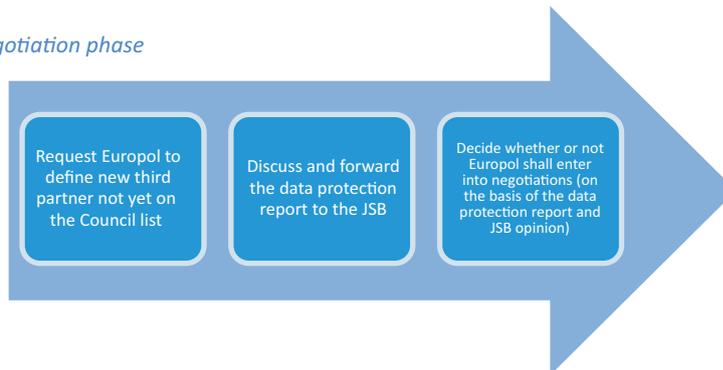
Apart from the clarification and scrutiny of procedural aspects such as the rules of transmission of personal data to third states and non-EU bodies, the Management Board helped pave the way for the smooth management of Europol's outreach activities and partnerships in three main ways: establishing standardised procedures and models, setting up criteria for approaching and prioritising new cooperation partners, and ensuring that cooperation

agreements would correspond with the MB's strategic priorities and thereby best serve the Member States.

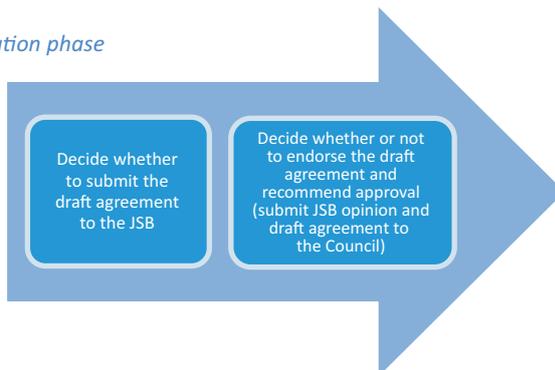
The period from 2004 until 2010 saw the swift expansion of outreach activities, as 10 strategic and 3 operational cooperation agreements were concluded, with a clear focus on the Western Balkans. Six years and 11 signed partnerships later, the nature of Europol's external relations

Management Board tasks in the conclusion of Europol cooperation agreements

MB tasks in the pre-negotiation phase



MB tasks in the negotiation phase



and the MB's role in its outreaching activities are about to change fundamentally with the coming into force of the Europol Regulation.

The role of the MB: now and then

Then as now, the MB is most notably involved in Europol's external relations in the preparatory phase of cooperation agreements. Under the ECD, the Management Board could request Europol to consider new third partners for cooperation and could draw up a list of private parties with which Europol may conclude Memoranda of Understanding. Furthermore, in the pre-negotiation phase, the ECD entrusted the Management Board with the evaluation and submission of data protection reports of potential partners to the Joint Supervisory Body. On the basis of those reports and the JSB opinion, the Management Board decided whether or not Europol should enter into negotiations with a potential partner. Only if there was a two-thirds majority, would the MB enable the beginning of negotiations by asking the Council to authorise the Director of Europol to negotiate a cooperation agreement.

Once negotiations had been initiated, the ECD tasked the Board with decisions at two points in the process: it had to ultimately approve and forward the draft agreement to the JSB, and — following the JSB opinion — had to decide whether or not to endorse the draft agreement, in which case it would be submitted together with the JSB opinion to the Council with a recommendation for approval. If that was the case,

the cooperation agreement could be concluded upon endorsement by the Council.

Over time, the MB has most notably contributed to Europol's outreach activities as a safeguard mechanism for concerting external cooperation, strategic goals and underlying norms and values. In particular, the MB has contributed to organisational and European security by ensuring first, that agreements adhered to standards, for instance concerning data protection; second, that they took into account political realities within and beyond the EU; and, third, that they were and remained designed for optimal and mutual benefits of the partners. Numerous examples can be found in this respect: for example, the negotiations on cooperation with Interpol. Due to concerns over the rules of transmission of personal data to third parties, the MB referred the draft text to the JSB several times suggesting amendments and clarifications. On a more general note, the MB's scrutiny of the data protection reports preceding negotiations, as well as its careful assessment of the conditions laid out in the draft agreements similarly safeguarded the conformity of Europol's external relations with the priorities of the Member States.

Concerning the Management Board's role in reconciling the agency's outreach activities with the political realities of the EU, examples can be found in the MB discussions on cooperation with Russia. Moreover, the MB has considered and supported Europol's relations with Turkey and the Western Balkans in the light of the migration crisis and has stressed the need for expanding Europol's network and advancing

relations with other third parties such as Morocco, the United Arab Emirates or China.

Regarding the guarantee of the smooth functioning and added value of Europol's partnerships, the MB played a crucial role through its regular strategic reviews of external cooperation. Since 2001, the MB has reviewed the Europol-US exchange of strategic and technical information, cooperation with other JHA agencies such as Frontex, where strategic cooperation was taken to the operational level in 2015. Additionally, the MB has been engaged in activities related to ensuring the complementarity and creation of synergies between Europol and its partner institutions, with an emphasis on avoiding duplication of tasks and overlaps, for instance in relation to Eurojust, Interpol and the Southeast European Cooperative Initiative (SECI).

Under the Regulation, Europol's external relations regime will change significantly. The new legal framework provides Europol with flexibility concerning case-by-case operational information exchange and non-personal data, which may be exchanged with any third party without an underlying agreement; on the other hand, Europol will no longer be able to conclude cooperation agreements. The Europol Regulation stipulates that personal data may be exchanged between Europol and EU bodies without the need for an agreement and that the Commission shall negotiate international agreements

with third parties on behalf of the EU and its agencies. Although this shifts the negotiation away from Europol, it endows the Management Board with two tasks in particular: to inform the responsible EU institutions of operational needs for cooperation with third parties, and to accommodate the strengthened role of the European Parliament in overseeing Europol's information exchange with private parties. Furthermore, in exceptional circumstances and individual cases — when no cooperation agreement is in place but conditions of necessity so require — the MB may authorise a temporary set of transfers of personal data to third parties or international organisations. The MB will continue to play an important part in Europol's external cooperation, but it will certainly be a different one with a reinforced emphasis on general oversight and management. In this context, preamble 16 of the Europol Regulation stipulates that '... the Management Board should effectively supervise the work of Europol ... and ... ensure the continuity of its work.' Such a confirmation of the Board's role may accordingly enable it in the future to more comprehensively assess Europol's external cooperation activities and partnerships against the background of larger operational needs and to provide guidance taking due account of the wider context of European strategic priorities.

'In so far as necessary for the performance of its tasks, Europol may establish and maintain cooperative relations with the Union bodies in accordance with the objectives of those bodies, the authorities of third countries, international organisations and private parties.'

— Article 29,
Europol Regulation

Strategic priority areas

EU Justice and Home Affairs bodies

As the governing body of the European Union agency for law enforcement cooperation and the organ tasked with its strategic guidance, the Management Board is neatly embedded into the Justice and Home Affairs environment through regular coordination and interaction with EU institutions and other agencies. Among the most important EU actors for MB action related to Europol's external relations is the JHA Council. Under the ECD, any Board decision to move forward with a cooperation agreement had to be endorsed by the Council before the possible conclusion of the agreement. With the Lisbon Treaty, the sole competence for international treaty-making was transferred to the Union. Therefore, Europol's external arrangements fundamentally change. However, the MB will remain closely involved and its outreach activities will remain important for Europol partnerships under the new Regulation in three respects: the MB will inform the Commission of operational needs for new non-EU partners; it will act, in agreement with the European Data Protection Supervisor, to authorise sets of personal

data transfers to third parties in situations that so require; and it will engage with the European Parliament — namely the newly established Joint Parliamentary Scrutiny Group (JPSG) overseeing the confidentiality and discretion of Europol activities — to ensure the compliance of cooperation arrangements with respective EU standards.

Some of the MB's early outreach activities included key actors within the EU JHA such as the EMCDDA, Eurojust or INTCEN. Further partnerships were concluded with the European Police College (CEPOL), with Frontex, most notably for cooperation on illegal immigration, and with the European Centre for Disease Prevention and Control (ECDC) and the EU Agency for Network and Information Security (ENISA). In the light of emerging operational needs, the MB additionally endorsed increased cooperation between Europol and the European External Action Service, in particular EU missions under the European Security and Defence Policy (ESDP), including cooperation with mission Atalanta on maritime piracy in 2012.

INTERPOL

Under the provisions of the Convention, Europol was entitled to enter into discussions with non-EU States and international organisations in advance of strategic and operational cooperation agreements. Among the candidates high up on Europol's priority list, right from the beginning, was the International Criminal Police Organisation (Interpol). Cooperation was advanced rapidly, as both partners agreed — in the words of former Interpol chief executive

Ronald Noble — that 'there [...] was no excuse for duplicating law enforcement efforts but all the reason for efficient cooperation.' An operational agreement between the two international police agencies was signed at the end of 2001, effectively enabling them to share critical criminal intelligence in the joint fight against serious organised international crime.

The Western Balkans

Since the beginning, the Management Board has stressed the need for making the Western Balkans a strategic priority, particularly with regard to illegal immigration and trafficking in human beings. In line with the EU's agenda for the Western Balkans of 2003, the MB provided momentum for the swift advancement of agreements with Western Balkan and EU accession States. The Board accordingly formulated a number of strategic priorities in its ad hoc meetings on partnership issues, as well as in the Europol External Strategy 2006-2008. Improving knowledge and information on organised crime activities originating from the Western Balkans and adapting European law enforcement responses presented a key target of enhancing cooperation. The Europol Western Balkans Roadmap adopted by the MB in May 2007 and the strategic cooperation agreements that were concluded with three Western Balkan States in the same year underline the importance the Board attributed to this endeavour.

Today, Europol maintains cooperation agreements with all Western Balkan States — Albania, Bosnia

and Herzegovina, the former Yugoslav Republic of Macedonia (FYROM), Montenegro and Serbia. Most of them are operational agreements that facilitate close cooperation and information exchange.

In its early days, as today, the MB considered the Western Balkans to be of critical importance with regard to a number of criminal activities affecting the EU. While the MB has continuously reiterated the need for enhanced cooperation with the Western Balkans and beyond, including through police missions such as EULEX Kosovo, the recent and persisting migration crisis has made these partnerships more important than ever. The region remains relevant for Europol's external relations, as discussed by the MB over the years and further demonstrated by close cooperation with a number of regional initiatives, such as the Southeast European Law Enforcement Centre (SELEC, formerly SECI Centre), the Southeast Europe Police Chiefs Association (SEPCA), and the Police Cooperation Convention for Southeast Europe (PCC SEE) Secretariat.

Transatlantic partners

Another regional priority, the Americas, have consistently been of critical importance in the Management Board's outreach activities and Europol's external relations. The MB has underlined the relevance of cooperation in this area from its first meetings onwards. In 2001, the United States were identified as a priority partner by the MB, and cooperation was formalised swiftly after the 9/11 terrorist attacks. Since then, Europol and the USA (as well as Canada since 2005) have been working together closely, especially on the topics of terrorism and cybercrime. Concerning

drug trafficking, the MB endorsed a strategic cooperation agreement with Colombia as early as 2004, while an operational cooperation agreement was only concluded in 2014. Other partners that appeared on the MB agenda include Brazil, Mexico and the Police Community of the Americas (Ameripol). While the MB decided that Europol should seek ways to cooperate with Ameripol in areas of common interest and to exchange mutual assistance and expertise in 2013, a strategic cooperation agreement with Brazil was approved in early 2016.

Towards the future

Whereas some of the strategic priority areas identified by the Management Board for Europol's external cooperation have especially focused on partnerships with EU JHA bodies, the Western Balkans, the Americas and private parties, other areas of cooperation remain on the MB's 'to do' list. Some have already been initiated, others are currently in the making or have yet to be approached.

Other developments to look out for in Europol's external relations include — on a general level — the expansion of its network of partnerships. Among them are the finalisation of an agreement with China, Georgia, Ukraine or the United Arab Emirates (UAE), following exploratory contacts since 2014. What is more, the MB now moves forward into a future of new possibilities and improved flexibility, arising from the Europol Regulation, with regard to cooperation with EU bodies and institutions as well as with private parties. The change in competencies of the Board as part of Europol's external relations will ultimately shift the MB focus to 'the bigger picture.'

After 100 MB meetings, Europol has at its disposal a respectable number of partners spread across the globe with which it cooperates for mutual benefit and the benefit of its Member States. The MB has most notably been involved in the agency's cooperation and partnerships with a dual task: to support and advance Europol's priorities and outreach activities while aligning them with those of its MS. When the Europol Regulation will become applicable, its responsibility of strategic guidance and oversight will increase in importance, as the ever-growing network of partnerships and cooperation initiatives has to be managed and furthered. In the light of changing political realities and the fast-paced evolution of terrorism and organised crime, many factors need to be taken into account when steering Europol into a future in which outreach activities increasingly matter. The identification of relevant strategic priority areas and partners, keeping track of the progress of partnerships and facilitating the smooth functioning of Europol as one of many wheels in European and international law enforcement cooperation will be among the main challenges of the next 100 MB meetings.



Jaroslav Palov

MB Member for the Slovak Republic

... on Europol's operational support to Member States and third parties

After 37 years of service in the Police Force of the Slovak Republic and having been active in various executive, operational and management positions, I have been in the position of Deputy Chairperson of the Management Board since 1 January 2016. I started in the MB after the accession process of Slovakia in 2001, with a 4-year break when I served as the police liaison officer in Budapest. After my return, I was appointed again to the position of Director of the Bureau of International Police Cooperation of the Presidium of the Police Force, which includes the Europol national unit.

Being an executive police officer and since the very first meetings with Europol I welcome all its activities of an operational nature and the assistance offered to police officers, customs officers, carabinieri and members of other law enforcement agencies (LEAs). During the past years, Europol established and confirmed its status as an extraordinarily important organisation — the EU agency for combating terrorism and international organised crime within the EU.

The earlier successful priority of the 'young' Management Board was the establishment of the Forgery of Money Unit. Apart from money forgery the unit dealt with issues of payment card fraud. Before the introduction

of the euro currency in Slovakia in 2009 its experts provided exceptionally useful training for our police officers which were related to money forgery and payment card frauds and, later, the training related to analysis of Bitmap codes for our forensic experts. We highly appreciate also the specific financial aid provided to countries in live operational cases, including through financial support for the purchase of samples, fake sale, technical assistance, reward for informants, operational costs, etc.

Yet another beneficial service or product of Europol was the organisation and financing of operational meetings in serious cases where the investigation or operational verification was performed in several countries. The meetings served as a platform for the exchange of information, planning of further advances of competent units and future joint actions. Realisation of operations in individual countries often uses assistance of experts from Europol who are present on the spot together with the Mobile Office and the UFED device.

At its 74th meeting in May 2010, the MB agreed to incorporate the financial intelligence units into Europol and also decided to make Europol's SIENA

application available for the exchange of information among the FIUs, whereas the FIU net integration into Europol was effectively carried out as of 1 January 2016. After tackling natural technical and legislative issues, the new unit will be fully functional and it will coordinate cooperation and provide the complex assistance to competent units.

Positive standpoints of the MB related to joining the areas of computer and other high-tech crimes, which led to the establishment of the European Cybercrime Centre (EC3) officially established in January 2013. The EC3 deals with the cases of cybercrime generating high profits, for example payment card frauds (online fraud), child abuse material and attacks on critical infrastructure and information systems in the EU.

In my opinion, the Management Board has an extraordinarily important status also in the policy cycle questions, Empact priorities and financing of the planned activities via the grants implemented within the Delegation Agreement. I especially value the increase of the volume of financial means for operational activities in comparison to other, non-operational ones. The financial support provided by the Commission enables the realisation of several projects of international operations, included in the actions of individual Empact priorities.

Ground-breaking operational activities, in my view, were the Europol-coordinated and supported joint operations Archimedes in 2014 and Blue Amber in 2015. Despite the different character and course of both operations, they achieved exceptional successes in the fight against organised crime

in participating countries, whether we talk about the number of apprehended persons, confiscated volume of drugs, weapons or motor vehicles. Together with other successes, these results are shown on the Europol website (www.europol.europa.eu) and they have been widely publicised in the media. They also received a positive response from experts and the general public.

Taking into account the recent terrorist attacks, I consider as very significant the MB meetings on the European Counter-Terrorism Centre (ECTC), officially established within Europol in January 2016. ECTC did not originate just like that from one day to another. Its foundations were derived from existing Europol employees, and the Centre took over the know-how, expertise and positive experience from previous Europol structures, namely the Counter-Terrorism and Financial Intelligence Unit — O4, IRU and Analysis Work File Terrorism. Taskforce Fraternité, established as the counter-reaction to terrorist attacks in Paris, verified the capacity of Europol and its operational and analytical assistance to France, Belgium and other participating countries.

As a reaction to the seriousness and multiplicity of cases of illicit migration in recent years, Europol established the Joint Operational Team (JOT) MARE. The success of the project, together with the recent migration crisis, led to the creation of the European Migrant Smuggling Centre (EMSC). Its establishment was officially announced by Europol on 22 February 2016. The Management Board supports EMSC in the entire range of its activities and in particular regarding the performance of analytical units

(EMAST) and operative units (EMIST) in the affected regions.

Last, but not least, the MB co-participated during the process of conclusion of agreements on operational cooperation between Europol and third parties, which enable the Member States, selected third parties and Europol to exchange personal data and other operational information in live cases of cooperation. The list of partners continually widens and the number of countries, the cooperation with whom is beneficial for all participating countries within the Europol mandate, increases.

In conclusion, let me mention that Europol provides operational products and services to the Member States regardless of their size, number of inhabitants, geographical location and years of membership within the EU. Within the MB functioning, too, all members have equal status and an equally important vote/voice.

On the occasion of the 100th meeting of the MB, I am convinced that the MB will successfully fulfil its tasks in the following years, in compliance with the new legal framework of Europol, determined in the

Regulation. Being one of the longest-serving MB members, I am also convinced that the adoption of a joint approach towards problem solving and creation of strategy in the fight against organised crime will help to adopt such solutions in the future that will be positively understood by the general public of EU Member States, but also by third countries. Yet another future task of the MB will be the creation of conditions in the operational area which will, by means of utilisation of all the accessible Europol tools and possibilities, increase the feeling of security in our countries. It is exactly the focus of the MB to promote operational forms of cooperation which enable Member States and associated countries to successfully manage problems brought by organised crime to the large territory that Europol covers.



JAROSLAV PALOV



Emma Disley

Associate Research Group Director, RAND Europe

... on stakeholder management and consensus-building as perpetual features of Europol

In 2012 RAND Europe — a not-for-profit research institution — published an “Evaluation of the implementation of the Europol Council Decision and of Europol’s activities”. The 4 years since the publication of the evaluation have seen significant changes, both within Europol, as it grew into its new agency status and now prepares for the changes to be brought about by the new Regulation; and within Europe, as challenges such as migration and terrorism have put European law enforcement cooperation at the top of the public and political agenda. At the same time, the themes at the heart of the evaluation, which relate to the management of a complex network of stakeholders and the need to build and maintain consensus, persist, and remain relevant — and look likely to do so for years to come.

The evaluation was intended to inform decision-making about the content of a future Europol regulation. Accordingly, it was wide-ranging in scope, covering operational, administrative and governance issues such as the effect of Europol’s new (at that time) status as an entity of the EU, the relationship between Europol and Member States, Europol’s role as an intelligence hub and in the analysis of personal data, and cooperation between Europol and other EU agencies, third states and external partners (including the private sector).

In the context of the forthcoming 100th Europol Management Board meeting in October 2016 and the very recent adoption of the new Regulation on Europol by the European Parliament and the Council, this article reflects on key themes from the evaluation — specifically those findings and recommendations that related most directly to the role of the MB — and considers their relevance today.

Working with the Commission on the Management Board and beyond

The implementation of the Europol Council Decision in 2010 led to shifts in the landscape of organisations with an interest in Europol, which had implications for the role of the MB. Europol’s new status as an EU entity meant that the Commission took a seat on the MB, and played a more prominent role in Board discussions and decision-making. The benefit of introducing Commission representation on the MB was a greater possibility for decisions to be informed by and therefore aligned with the broader justice and home affairs policy — bringing Europol into the forefront of policy and decision-making about European law enforcement cooperation. On the other hand, it might be thought that an increased role for the Commission could blur the

line between operational and ‘political’ considerations in priority setting.

The role, responsibilities and powers of the MB will be largely unchanged under the new Regulation (Article 11) ⁽¹⁾. A proposal to increase the number of Commission representatives on the MB from one to two was rejected and does not feature in the Regulation, with the existing make-up of the MB being maintained. ⁽²⁾ Given the profile of security and law enforcement within the agenda of the Commission, ⁽³⁾ all indications are that its presence on the MB will inevitably give rise to tensions that MB members will need to continue to manage. The evaluation did not propose any substantive change to address this challenge as the evidence collected led to the conclusion that the solution lay in improving communication with its stakeholders. It recommended that Europol:

‘... could more systematically articulate the implications of these demands for priority setting and its ability to focus on defined priorities. These should be communicated to key stakeholders and decision-makers ...’

(P. XXII).

This recommendation, encouraging Europol to present evidence to its stakeholders as a

⁽¹⁾ See ECD Article 9 for the current MB role and powers.

⁽²⁾ The Regulation gives a member of the newly created Joint Parliamentary Scrutiny Group for Europol the ability to attend meetings of the MB but they are only granted observer status (Article 14(4)).

⁽³⁾ Internal security — via the implementation of the European Agenda on Security — was one of 10 priority areas in the Commission Work Programme 2016 (http://ec.europa.eu/atwork/pdf/cwp_2016_en.pdf). The need to progress with the planned reform of Europol was expressly noted (Paragraph 7, p. 10).

basis for dialogue, still appears to be the most promising way forward.

Listening to Member States through the Council and the Management Board

Another relationship that was evolving and being formed at the time of the evaluation and alongside the implementation of the ECD was one between the MB and the Standing Committee on Operational Cooperation on Internal Security.

When the fieldwork was conducted for the evaluation, COSI had been established for just under 2 years but Europol was already playing a central role in the Organised Crime Policy Cycle led by COSI. At a strategic level, the Europol-produced Serious and Organised Crime Threat Assessment provides the basis on which COSI identifies and proposes the political priorities for the policy cycle. On an operational level, Europol operates the European Multidisciplinary Platform against Criminal Threats, which provides support to those implementing the policy cycle.

The evaluation found that there was the potential for overlapping roles between the MB and COSI in determining Europol’s priorities, since both COSI and the MB provided routes through which Europol could discover the priorities and concerns of MS. The evaluation concluded that there would be value in further clarifying this relationship. Pre-empting this finding, before the publication of the evaluation report, the MB had already established a working group on its own functioning whose remit extended to look at external relationships. This working group published a paper on the tasks, role

and position of the Management Board, which set out some principles related to the way in which Europol interacted with and responded to demands from the Council structures, including strategies for communicating Europol's work and activities. Although not commented on at the time in the evaluation report, these recommendations from the internal MB working group 'fit' with those from the evaluation, to the extent that both encourage Europol to manage its stakeholders through more proactive communication and engagement.

The relationship between COSI and Europol has continued to evolve. In 2015, COSI was assigned the task of monitoring the establishment of the European Counter Terrorism Centre and Internet Referral Unit at Europol. ⁽⁴⁾ The text adopted for the new Regulation broadly confirmed Europol's role vis-à-vis COSI. In the organised crime policy cycle, Europol remains the provider of strategic threat assessment in order ...

... to assist the Council and the Commission in laying down strategic and operational priorities of the Union for fighting crime.'

EUROPOL REGULATION ARTICLE 4(2)

The extent to which these considerations, apart from the intelligence picture in the SOCTA, feed into the process of selecting the priorities (which Europol then helps deliver) will inevitably be, at times, subject to different views. Indeed, different views may be healthy.

⁽⁴⁾ Europol (2015), Enhancing counter-terrorism capabilities at EU level: European Counter Terrorism Centre (ECTC) at Europol and counter-terrorism related information sharing, Europol: The Hague (<http://data.consilium.europa.eu/doc/document/ST-14244-2015-INIT/en/pdf>).

What is important, perhaps, (as identified by Europol at the time of the evaluation) is to ensure a strong working relationship with COSI.

The evaluation recommendations regarding communication and stakeholder management might also be relevant to what is, arguably, the most significant reform introduced by the Europol Regulation: the voice of Member States in holding Europol to account is intended to be significantly enhanced by the introduction of a new (some have called it 'revolutionary'⁽⁵⁾) joint parliamentary scrutiny mechanism. A Joint Parliamentary Scrutiny Group will be established within the European Parliament comprising one member of the EP from each MS and one (or two for those MS with bicameral parliaments) member of the national parliament (see Chapter VIII of the Regulation). Thus Europol gains another stakeholder group which could provide an additional link between the agency and the MS it serves and which will need to be communicated with and provided with information.

The continued commitment to consensus and demonstrating value added

A third finding from the evaluation that offered insight into the role and functioning of the MB was that the Board continued to seek consensus, despite the newly created ability to make decisions on a majority basis.

The evaluation found that the introduction of qualified majority voting in the MB was

⁽⁵⁾ <http://blog.renforce.eu/index.php/nl/2016/05/30/revolution-in-the-eu-system-of-political-accountability-joint-parliamentary-scrutiny-mechanism-2/#more-426>

strongly welcomed, but all stakeholders hoped that it would not be used. MB members felt that if decisions were consistently taken on a majority basis, then this could indicate a lack of buy-in from MS, which could harm Europol in the long term, given its inherent reliance on and underlying mission to support them.

The idea that seeking consensus is at the heart of Europol's approach sits behind another important conclusion of the evaluation: imposing information-sharing obligations on MS would be difficult to enforce and, perhaps more importantly, would risk damaging the trust that they have in Europol. Instead, the evaluation recommended that:

'Europol should build upon existing approaches to communicating information gaps and should identify proactively key influencers and devise professionally designed and implemented communication strategies.'

Members of the MB were and are one 'key influencer', but the evaluation went on to suggest that:

'The possible advantages and disadvantages of communicating information needs to COSI should be specifically investigated ...'

Whether or not directly influenced by our evaluation findings, the new Regulation on Europol contains a provision reflecting this recommendation, requiring the Agency to 'draw up an annual report "on the information provided by each Member State" which is to be shared with the European Parliament, the Council, the Commission and national parliaments' (Europol Regulation Article 7(11)).

One can interpret this article of the Regulation as being in line with the tradition of encouraging information sharing by MS through actively communicating and demonstrating the value added of doing so, rather than requiring or obligating sharing. The annual report mentioned in Article 7(11) of the Regulation is intended to ensure that stakeholders understand the extent of information sharing, the gaps, and the implications of these gaps. As a named recipient of this report, COSI is one route through which Europol can communicate with MS about the extent and perceived adequacy of information sharing. This demonstrates the multi-faced nature of the relationship with COSI. As well as having some oversight of Europol, COSI might conceivably act as an 'ally' for Europol and the MB in sending coherent and consistent messages to law enforcement agencies in MS.

However, on the point of information sharing, it is important to note that the Europol Regulation does make changes — although not, it seems, fundamental ones. The relevant article does not create an obligation on MS to share information.⁽⁶⁾ However, a very important statement is included in the Recital to the Regulation, which states that:

'Clear obligations should be laid down requiring Member States to provide Europol with the data necessary for it to fulfil its objectives.'

EUROPOL REGULATION RECITAL 13.

⁽⁶⁾ Article 7(6) of the Europol regulation is very similar to Article 8(4) of the ECD, both of which state that each MS shall provide Europol with the information it needs to carry out its tasks.

How this will be put into practice will only become clear over time (and as yet there is little reaction or analysis published by academics and commentators in this field), but Recital 13 appears to be creating a general duty of cooperation while foreseeing the possibility of laying down obligations in the future. The Regulation appears to be in line with the recommendation of our evaluation that a duty to share information should not be imposed, but appears to leave the door open to doing so. Perhaps, like the creation of qualified majority voting under the ECD, this provision of the Regulation serves a more important symbolic than practical purpose: a provision that is welcomed, but hoped never to be used given the possibly deleterious impact on the trust by MS of requiring information sharing. The challenge is to ensure that MS and their law enforcement agencies are not required to act against their will, while at the same time feel obliged to contribute where they can.

The Management Board in the coming years

There are other themes from the 2012 evaluation which could have been selected for mention when we are commemorating the 100th MB meeting, reflecting on and learning from the journey that Europol has already made and looking forward to challenges and opportunities in the future.

For example, the evaluation found that attention needed to be paid to ensuring the MB took a sufficiently strategic focus, while continuing to bring a somewhat operational expertise (the Europol Regulation states that MB members should preferably have some

‘knowledge of law enforcement cooperation’ Article 10(2)). At the time of the evaluation the MB had already identified the need to look at this issue and the MB working group included this within its remit. However, locating and maintaining the appropriate level of focus will require ongoing attention, and might also differ according to the issue at hand and the expertise, interests and skills of other stakeholders involved. This again indicates the centrality of self-reflection and intelligent and proactive relationship-management by Europol.

The evaluation also noted the risk to and opportunities for Europol resulting from reforms to agencies such as Frontex and Eurojust. In the time since the evaluation was published there have been several developments in cooperation between Frontex and Europol. The agencies signed a data sharing agreement in 2015⁽⁷⁾ and Europol and Frontex, along with Eurojust and the European Asylum Support Office, now partner in the European Regional Task Force, to respond to the migration crisis.⁽⁸⁾ The coming years will also see the establishment of a European Public Prosecutors Office (EPPO).⁽⁹⁾ At the time of writing, the powers of the EPPO are not yet agreed, but it will likely involve the establishment of an independent office with the authority to prosecute corruption cases that relate

⁽⁷⁾ Ibid.

⁽⁸⁾ Frontex (2015), Frontex and Europol Agree to Exchange Information on Cross-Border Crime, available at: <http://frontex.europa.eu/news/frontex-and-europol-agree-to-exchange-information-on-cross-border-crime-dEyVpQ>

⁽⁹⁾ European Commission 203, Commission Staff Working Document: Impact Assessment Accompanying the Proposal for a Council Regulation on the Establishment of the European Public Prosecutor’s Office.

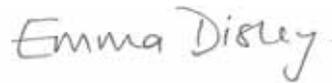
to the EU, independent of Member States' prosecution authorities, albeit in national courts. Europol will have to adapt accordingly and establish clear protocol for relationships between both agencies.

In the preface to the 2012 evaluation we stated that:

'The evaluation is conducted at a time of change in Justice and Home Affairs within the EU. A number of initiatives and developments relating to European law enforcement cooperation are in progress, and a new legal basis for Europol (contained in a future regulation), is anticipated (p. i).'

This statement remains true today, and since the pace of change shows no sign of slowing, is likely to remain true for the foreseeable

future. The anticipated changes in the institutional landscape mean that the role of the MB will need to continue to evolve and respond. To this extent the recommendations of our evaluation that Europol — and in particular the members of the MB — must be vigilant for overlap and duplication, identify gaps and areas for further cooperation and make the most of cooperation opportunities, seems as relevant now as in 2012.



EMMA DISLEY



Conclusions

Alfredo Nunzi

Secretary of the Management Board

An essential element of the preparations for an incoming chairmanship is the drawing up of the list of items to be discussed during each meeting of the Management Board that would be held during the Council's 18-month programme and the calendar of meetings. When the preparations for Mr IJzerman's chairmanship started, we in the Secretariat realised that the Board would convene for its 100th meeting in October 2016 and discussed with the incoming Chairperson possible ways to mark this event.

The idea of a review of the events that have occurred since the Board first met in 1998 came naturally, given the wealth of information available. This publication aimed at being more than a simple stock-taking exercise; its rationale is that it may be useful, perhaps necessary, to recall the steps that have made a long journey: the discussions and decisions of the Management Board. The documentation available — agendas, meeting documents and minutes, decisions, opinions, reports — was reviewed with a view to recalling the most important events and changes that have happened since 1998.

However, the history of the Management Board is first and foremost a history of the men and women — too few! — who have taken part in its deliberations. Under the Europol Convention, some held the post of Chairman during their Member State's Presidency of the European Union; under the Europol Council Decision, others have served as Chairperson on behalf of the three Member States responsible for the preparation of the 18-month programme. 26 members have chaired

the Board since 1998, two of them twice, so that the roster counts 28 Chairs during 38 EU Presidency semesters. A small community, formed by senior government officials with similar professional backgrounds and yet diverse experiences, cultures, languages and personal styles.

In spite of the respective differences, the remarkable common factor was their dedication to the interest of Europol and its development. Regardless of the national position, which they defended while serving as Board member, once taking up the responsibility to steer the discussions, their allegiance was geared towards the best collective interest. Each Chairperson had his own style and approach: some were down-to-earth and direct, while others were more diplomatic and flexible. The task they assumed, however, added a trait to all, for the Chairperson bears the responsibility to ensure that the different experiences and interests of the Member States' law enforcement agencies find in Europol a common ground to provide additional security to their citizens.

The Management Board Secretariat is privileged to work for the representatives of the Member States and the Commission and has the unique opportunity to assist the Chairperson in fulfilling his or — hopefully soon — her responsibilities. Since its establishment, the Secretariat has endeavoured to provide its services bearing in mind the need to guarantee open, fast and thorough communication between the Chairperson and the Director in order to ensure the best conditions for decision-making by the Management Board. This work can only be done *sine spe et sine metu*, without fear or favour in the discharge of duties.

During the past 18 years and 100 meetings there have been problems to tackle, tensions to ease, documents to draft, decisions to make, appointments to recommend and messages to issue. These functions have been supported by a small team of dedicated and competent Europol staff: Søren Beier, who served as Secretary from 1998 to 2003, Borja Barbosa, Lotte Skovgaard, Marianna Karras and Laure Michel deserve to be mentioned for their work and commitment during different periods of the Management Board's history. Furthermore, Antonio Ortiz and Franca König have worked tirelessly on this publication.

The 100th meeting of the Management Board convenes at a time of change for Europol and the European Union as a whole: a new legal regime is about to be enforced with the forthcoming application of the Europol Regulation, while geopolitical developments and threats of unprecedented scale and magnitude loom over the Union. As Europol and its Management Board have gone a long way in the journey towards a Security Union, this publication is also a tribute to the successes achieved by the European law enforcement cooperation.

A handwritten signature in black ink, reading "Alfredo Nunzi". The signature is written in a cursive style with a large initial 'A' and a long, sweeping underline.

ALFREDO NUNZI

LIST OF MB CHAIRPERSONS 1998-2016

KARL RUSO	Austria ⁽¹⁾	1998
GÜNTHER KRAUSE	Germany	1999
KARI RANTAMA	Finland	1999
JAIME FERNANDES	Portugal	2000
PATRICK RIOU	France	2000
STEN HECKSCHER	Sweden	2001
PATRICK ZANDERS	Belgium	2001
JUAN COTINO FERRER	Spain	2002
JAKOB SCHARF	Denmark	2002
NIKOLAOS TASIPOULOS	Greece	2003
RODOLFO RONCONI	Italy	2003
JIMMY MARTIN	Ireland	2004
JAN VAN DEN HEUVEL	Netherlands	2004
ROMAIN NETTGEN	Luxembourg	2005
ROB WAINWRIGHT	UK	2005
HARALD FELGENHAUER	Austria	2006
KARI RANTAMA	Finland	2006
HANS-JÜRGEN FÖRSTER	Germany	2007
JAIME FERNANDES	Portugal	2007
ROBERT ČREPINKO	Slovenia	2008
BERNARD PETIT	France	2008
VIKTOR ČECH	Czech Republic	2009
SÖREN CLERTON	Sweden	2009
FRANCISCO JOSÉ ARANDA	Spain/Belgium/Hungary	2010-2011
RAFAL LYSAKOWSKI	Poland/Denmark/Cyprus	2011-2012
JOHN O'MAHONEY	Ireland/Lithuania/Greece	2013-2014
GENNARO CAPOLUONGO	Italy/Latvia/Luxembourg	2014-2015
ARIE IJZERMAN	Netherlands/Slovakia/Malta	2016-2017

⁽¹⁾ Presidency of the Council and presidency trios.

*MB meeting in
Copenhagen,
October 2002*





*MB meeting
in Dublin, May 2004*



*MB meeting
in Poland,
December 2011*



*MB meeting in
The Hague,
May 2016*



LOOKING BACK
MOVING FORWARD

ONE HUNDRED MEETINGS
OF THE EUROPOL MANAGEMENT BOARD



Publications Office