



PARLAMENTO EUROPEO EVROPSKÝ PARLAMENT EUROPA-PARLAMENTET  
EUROPÄISCHES PARLAMENT EUROOPA PARLAMENT ΕΥΡΩΠΑΪΚΟ ΚΟΙΝΟΒΟΥΛΙΟ EUROPEAN PARLIAMENT  
PARLEMENT EUROPÉEN PARLAMENTO EUROPEO EIROPAS PARLAMENTAS  
EUROPOS PARLAMENTAS EURÓPAI PARLAMENT IL-PARLAMENT EWROPEW EUROPEES PARLEMENT  
PARLAMENT EUROPEJSKI PARLAMENTO EUROPEU EURÓPSKY PARLAMENT  
EVROPSKI PARLAMENT EUROOPAN PARLAMENTTI EUROPAPARLAMENTET

**Directorate-General Internal Policies  
Policy Department C  
Citizens Rights and Constitutional Affairs**

Brussels, 8 December 2006

**Background Note for the Seminar organised by the LIBE Committee  
AN EFFICIENT AND ACCOUNTABLE POLICE COOPERATION  
IN THE EU - THE WAY FORWARD**

**Monday 18 December 2006, 15:00 - 18:30**

**TABLE OF CONTENTS**

<b>Introduction</b>	<b>2</b>
<b>Legal Obligations and political commitments for police cooperation</b>	<b>3</b>
<b>Fight against terrorism</b>	<b>5</b>
<b>Internal Security Architecture, OCTA and Intelligence-led policing</b>	<b>7</b>
<b>Europol</b>	<b>8</b>
<b>CEPOL</b>	<b>10</b>
<b>Police Chiefs Task Force</b>	<b>11</b>
<b>Joint Investigation Teams</b>	<b>12</b>
<b>European Crime Prevention Network</b>	<b>13</b>
<b>Interpol</b>	<b>14</b>
<b>Police aspects of the Schengen cooperation and SIS II</b>	<b>15</b>
<b>Improvement of police cooperation between MS and amendment of Schengen</b>	<b>17</b>
<b>Access for consultation of the VIS</b>	<b>18</b>
<b>G 6 meetings</b>	<b>19</b>
<b>The Prüm Convention</b>	<b>20</b>
<b>The principle of availability</b>	<b>22</b>
<b>Data protection, including PNR</b>	<b>23</b>
<b>Decision making process in the third pillar</b>	<b>24</b>

## INTRODUCTION

European citizens urge the EU to put in place the necessary measures to make the Union a safe place to live in. Better and closer co-operation between law-enforcement agencies in the Union is crucial to ensure that the EU develops into a genuine single area of freedom, security and justice, where individuals' rights are protected and organised crime efficiently countered. The European Union must be able to provide rapid and effective responses to tackle security deficits caused by the abolition of border controls within the Schengen area, especially to face the new international terrorism-related threats. However, the European Parliament has insisted on the need to keep a balanced approach between enhancing security and safeguarding fundamental rights.

This **background note** aims at providing a general **overview of the institutional framework** concerning police cooperation in the EU, while also covering the current **informal structures**. In this context, reference is made to the **strategic and operational aspects**. Latest developments at EU level, as well the **main obstacles** which need to be overcome, are also mentioned.

The **main issues** at stake and the **positions of the European Parliament** are presented in a table **at the end of each section**.

## **LEGAL OBLIGATIONS AND POLITICAL COMMITMENTS FOR POLICE COOPERATION (EU Treaty, Trevi group, Schengen Agreement, Amsterdam Treaty, Vienna Action Plan, Tampere Conclusions, the Hague Programme)**

The legal obligations and political commitments for police co-operation in the EU can be found in the Treaty on the European Union (TEU), the Schengen Agreement, the Vienna Action Plan, the Tampere European Council Conclusions and the Hague Programme.

Formal police cooperation between Member States' representatives began in 1975 with the creation of the **TREVI group**. Its main subjects were terrorism and the organisation and training problems of police departments.

The policy area of **justice and home affairs**, including co-operation between Member States' police services, was foreseen for the first time with the **Maastricht Treaty** of 1992, which created the European Union. Article K of this Treaty mentioned customs and police co-operation as matters of common interest for the purpose of achieving the objectives of the Union. Improved possibilities for cooperation in the field of justice and home affairs (the so-called "third pillar") were opened up by the **Treaty on European Union (TEU)** as amended by the **Treaty of Amsterdam**, entered into force in May 1999, which strengthened the institutional framework and further developed the decision-making process in this area.

The **TEU** states in **article 29** that "*...the Union's objective shall be to provide citizens with a high level of safety within an area of freedom, security and justice by developing common action among the Member States in the field of police and judicial co-operation in criminal matters.*" This objective shall be achieved by preventing and combating crime, organised or otherwise, through closer cooperation between police forces, customs authorities and other competent authorities in the Member States (MS), both directly and through Europol. **Article 30** of the **TUE** explains that common action in the field of police co-operation shall include: 1) operational co-operation between the competent authorities, including the police, customs and other specialised law-enforcement services of the MS in the prevention, detection and investigation of criminal offences; 2) in the collection and storage, processing and exchange of information, in particular through Europol; 3) joint initiatives in training, exchange of liaison officers and forensic research; 4) and common evaluation of investigative techniques. This article also specifies a number of general and specific obligations as regards cooperation through Europol.

In addition to articles 29 and 30 TEU, there are also obligations resulting from the **incorporation into the EU framework of the Schengen Convention** of 1990, following the entry into force of the Amsterdam Treaty. The Schengen Convention provides for the abolition of border controls among MS, while at the same time reinforcing control measures at common external borders. Police co-operation obligations were introduced so as to counteract any security deficit caused by the abolition of the checks at the internal borders. With the Amsterdam Treaty, matters concerning immigration, visas and asylum were incorporated into the Treaty on the European Community (**Title IV TCE, "first pillar"**) and matters relating to police and judicial co-operation in criminal matters were incorporated into **Title VI TEU, ("third pillar")**. In addition to these legal obligations there exist other important documents which contain commitments at the highest political level to achieve concrete progress regarding police co-operation: the Action Plan to Combat Organized Crime of 1997, the **Vienna Action Plan** of December 1998 and the **Conclusions of the Tampere European Council** of October 1999.

The European Council, reaffirming the priority attached to the development of an area of freedom, security and justice, adopted in November 2004 **the Hague Programme**, a new multi-annual framework, which focuses on a "multi-disciplinary and concerted action both at EU level and at national level between the competent law enforcement authorities, especially police, customs and border guards". The Council and Commission adopted in June 2005 an **Action Plan** implementing the Hague Programme on strengthening freedom, security and justice in the EU.

Police co-operation in the Union extends and supplements already existing, successful bilateral co-operation between MS. A more recent **development in bilateral co-operation** is the formalisation and intensification of cooperation between MS sharing a common border through joint police stations or joint police and customs co-operation centres.

## FIGHT AGAINST TERRORISM

Since the devastating attacks of **11 September 2001**, the European Union has made the fight against terrorism one of its top priorities. The attacks in Madrid in March 2004 and in London in July 2005 reinforced the EU's determination to combat terrorism and confirmed the need for a comprehensive response to the terrorist threat. The alleged plot this August to blow up US-bound planes flying from London led to renewed debate on how to protect air transport from terrorism.

In December 2005, the European Council adopted an **EU Counter-Terrorism Strategy** and related **Action Plan**, as well as a strategy and action plan against radicalisation and recruitment into terrorism. These strategic documents specify those areas of counterterrorism which are of particular importance to security and thus upon which the Union and MS should focus.

Following on from the recently disrupted terrorist plot in the UK, an informal **Multi-Presidency meeting** led by the current EU Presidency, Finland, was held in London on 16 August 2006. At the meeting, the EU Interior Ministers of Finland and the future Presidencies, Germany, Portugal, Slovenia and France, together with the Commission and the UK emphasised the need: 1) for urgent work to prevent EU citizens from turning to terrorism through **radicalisation and recruitment**; 2) for EU Member States and the Commission to accelerate the delivery of the EU Counter-Terrorism Strategy, including an even greater focus on addressing home-grown terrorism; 3) for the Commission to broaden its network of experts on radicalisation and to establish an active programme of joint projects; 4) to prevent and/or reduce the use of the **Internet** for terrorist-related purposes; 5) for the relevant aviation experts and law enforcement authorities in the EU to meet as soon as possible to review the implications of this incident; 6) for research into **explosives** particularly targeted at work on liquid explosives.

The establishment of the **EU Counter-Terrorism Coordinator (CTC)** was agreed by the European Council on 25th March 2004 in the wake of the Madrid bombings. Mr. Gijs de Vries was appointed to that position. His main tasks are to co-ordinate the work of the Council of the EU in combating terrorism, to maintain an overview of all the instruments at the Union's disposal, to closely monitor the implementation of the EU Action Plan on Combating Terrorism, and to secure the visibility of the Union's policies in the fight against terrorism.

The Council adopted in June 2002 a **Framework Decision** to fight more efficiently against **terrorism**. It contains a definition of terrorist offences, defines infringements linked to terrorist acts, covers behaviours which may contribute to such acts, approximate the levels of sanctions between Member States and explicitly guarantees the respect for fundamental rights.

The **Hague Programme** contains specific provisions on terrorism, stating that: "the high level of **exchange of information between security services** shall be maintained", while also "giving particular consideration to the special circumstances that apply to the working methods of security services". The Hague Programme also focuses on the role of **SitCen**, the Situation Centre located within the Council General Secretariat. "SitCen will provide the Council with strategic analysis of the terrorist threat based on intelligence and security services and, where appropriate, on information provided by Europol".

In its Legislative and Work Programme for 2007 adopted on 24 October 2006, the European **Commission** announced the intention to **withdraw its proposal**, put forward in December 2005, for a Council Decision on the **transmission of information** resulting from the activities of **security and intelligence services** with respect to terrorist offences. This proposal aimed at establishing a mechanism to ensure the transmission to **Europol** of such information. The Commission was of the opinion that legislation was no longer necessary in this field and decided to change its approach, taking into account that the Situation Centre in the Council has de facto

strengthened its role as the focal point at European level for the pooling of information coming from the security services and that it has acted upon its existing mechanisms to exchange information with Europol.

**The lack of trust between national security and intelligence services** in the fight against terrorism remains a major problem to overcome. In this context, reference should also be made to the **principle of availability**, introduced with the Hague Programme. The **Counter Terrorism Task Force within Europol** has not produced satisfactory results, due also to its lack of operational powers.

**The European Parliament** has insisted on the fundamental importance to keep a **balanced approach for enhancing security while safeguarding fundamental rights**. The EU Charter of Fundamental Rights, solemnly proclaimed at the Nice European Council in December 2000, is a key instrument of political legitimacy. The Charter was included in the Treaty establishing a Constitution for Europe (in its Part II), signed in October 2004, which has not been ratified yet.

## **INTERNAL SECURITY ARCHITECTURE, ORGANISED CRIME THREAT ASSESSMENT AND INTELLIGENCE-LED POLICING**

During the first semester of 2006, the Austrian Presidency considered the need for the EU to set up an "**architecture of internal security**" and adopt and implement a methodology for intelligence-led law enforcement, putting an emphasis on the collection and analysis of information and intelligence. The JHA Council adopted in June 2006 a reference framework, while proposing some practical measures, based on the existing Treaties, for enhancing the horizontal coordination of operational cooperation. The Council will assess the needs for such measures in the context of the **review of the Hague Programme**. The reference framework for the EU internal security should consist of **four steps**: 1) providing a comprehensive threat assessment concerning the overall EU internal security; 2) defining the political priorities for the EU internal security, 3) ensuring the implementation of these priorities by all involved actors; 4) ensuring the appropriate evaluation. Key element in this process is **intelligence-led operation and cooperation**. However, as the implementation of such a framework for the whole EU internal security is a long term objective, it was decided to start this process in the field of organised crime, with the first **Organised Crime Threat Assessment (OCTA)** made available by Europol in June 2006. In the longer term the process should be expanded to other fields and gradually become a global approach encompassing all subjects and actors to internal security, including terrorism, illegal immigration, cross-border volume crime, risk and crime assessment connected to major events. **The potential effects of OCTA remain to be explored.**

The OCTA came as a result of the Hague Programme, which calls upon Europol to replace its annual Organised Crime Situation Report by Threat Assessments on serious forms of organised crime. The OCTA uses a multi-source approach. This methodology was used to collect information from the widest possible area and not only from the law enforcement environment but also from key public and private partners thus providing more depth to the assessment of serious organised crime. The OCTA is aimed at looking to the future. Europol is moving away from a mainly retrospective document towards an assessment, which will help decision makers to base their mid-term and, if possible, longer term strategic planning on a sound foundation.

The main task of the OCTA is to identify and assess emerging threats. Furthermore, it describes the structure of organised crime groups and the way they operate as well as the main types of crime affecting the European Union. Europol is requested to issue a structured and detailed **Intelligence Requirement**, which will give MS a clear indication of what information and criminal intelligence is needed. The JHA Council, when adopting its Conclusions on the OCTA 2006, required measures be taken at the EU level, focusing on operational cooperation between the judicial and law enforcement authorities of all MS and, where necessary, with the relevant third countries. Reference should also be made to the **European Criminal Intelligence Model (ECIM)**, which has to be developed.

Having regard to the need for greater coordination of the operational cooperation in matters of EU internal security, the Constitutional Treaty had included the se-up of a **Committee on Internal Security (COSI)**, from the French acronym "Comité pour la sécurité intérieure"). Due to delays in the entry into force of the Constitutional Treaty, it was not considered appropriate to set up such a Committee at present, although the Hague Programme contained a specific reference. **One possibility to enhance the coordination of operational activities by law enforcement agencies could be the setting up of the COSI.** Such a Committee would have different functions than the current Article 36 Committee (CATS), which is tasked with the preparation of Council activities in JHA matters.

## EUROPOL

Europol is the **EU law enforcement organisation** that handles criminal intelligence. Its aim is to improve the effectiveness and cooperation between the competent authorities of the MS in preventing and combating serious international organised crime and terrorism. The mission of Europol is to make a significant contribution to the European Union's law enforcement action against organised crime and terrorism, with an emphasis on targeting criminal organisations.

Europol is funded by contributions from the Member States according to their GNP. Budget 2006: EUR 63.4 million. There are 590 people working at the Europol premises. Of these, 90 are Europol liaison officers (ELOs) representing a variety of law enforcement agencies (police, customs, gendarmerie, immigration services, etc.).

The establishment of Europol was agreed in the **Maastricht Treaty** on European Union of 7 February 1992. Based in The Hague, Netherlands, Europol started limited operations on 3 January 1994 in the form of the Europol Drugs Unit (EDU) fighting against drugs. Progressively, other important areas of criminality were added. As of 1 January 2002, the mandate of Europol was extended to deal with all serious forms of international crime as listed in the annex to the Europol Convention. The Europol Convention was ratified by all Member States and came into force on 1 October 1998. Following a number of legal acts related to the Convention, Europol commenced its full activities on 1 July 1999.

Europol **supports the law enforcement activities of the MS** mainly against: illicit drug trafficking, illicit immigration networks, terrorism, forgery of money/counterfeiting of the Euro, trafficking in human beings including child pornography, illicit vehicle trafficking, money-laundering. In addition, other main priorities for Europol include crimes against persons, financial crime and cyber crime. Since international organised crime does not stop at national borders, Europol has improved its international law enforcement cooperation by negotiating bilateral **operational or strategic agreements** with other States and international organisations.

The Europol Convention states that Europol shall establish and maintain a **computerised system** to allow the input, access and analysis of data. The Convention lays down a strict framework for human rights and data protection, control, supervision and security.

As indicated above, Europol as of 2006 is in charge of preparing the **OCTA**, which will be used as a tool by the Council to set the priorities that Europol and other agencies and bodies at EU level engaged in the fight against crime will take forward. **Europol is accountable to the JHA Council**, which is responsible for its guidance and control. It appoints the Director and the Deputy Directors and approves the budget. The Europol **Management Board** comprises one representative from each MS and has the overall task of supervising the activities of the organisation. The **Joint Supervisory Body**, comprising two data protection experts from each Member State, monitors the content and use of all personal data held by Europol.

Europol should improve its working arrangements with **Eurojust**, which follows a more practical approach, assisting Member States' authorities in overcoming obstacles in cross border investigations and prosecutions that arise from different legal systems and languages.

Europol does not have any powers to arrest people, or take other coercive measures. **This lack of operational powers is one of the main problems of Europol.** On the other hand, critics of the potential powers that Europol could accumulate have voiced concerns against its development into a **European FBI**. Many practitioners argue that the level of the exchange of information between law enforcement authorities within Europol has been rather disappointing. This has been attributed to the **lack of trust between national authorities**. The **principle of availability** could play an important role in this context, although trust cannot be imposed in a regulatory way.

Another major obstacle to the development of Europol is the **lack of accountability and democratic control**. The Constitutional Treaty and the Hague programme are very ambitious regarding the future of Europol, stating that the Council should adopt the **European law** on it.

The **European Parliament has no real powers** in deciding legislation affecting the remit or powers of Europol, whereas parliaments in the MS must approve rules governing the functioning of national agencies. The **European Parliament has raised the subject of democratic control several times**.

In order to improve the efficiency and accountability of Europol, **the JHA Council of 4-5 December 2006 adopted Conclusions on the future of Europol**, taking note "that the **ratification of the three Protocols** amending the Europol Convention has been completed by nearly all Member States. Provided that the remaining ratifications are notified by the end of the year, the Protocols will enter into force during the first quarter of 2007". In its Conclusions no. 4, the Council "agrees that the **Europol Convention should be replaced by a Council Decision, subject to a full assessment of the implications of the following elements:** i) financing of Europol from the general budget of the European Union, and ii) application of the EU Staff Regulations as well as the Protocol on Privileges and Immunities of the European Communities to Europol Staff". Furthermore, the Council took "note of the intention of the Commission to submit a proposal to it for a Council Decision replacing the Europol Convention".

In conclusion, **Europol could become an EU Agency**.

## EUROPEAN POLICE COLLEGE (CEPOL)

The **Tampere European Council** called for the establishment of a European Police College for the training of senior law enforcement officials. On 22 **December 2000**, the Council adopted a **Decision establishing a European Police College**, known as **CEPOL** for its French abbreviation, which started as a network of existing national training institutes. The **current Council Decision of September 2005** confers on Cepol the status of a **body financed from the EC budget**, thus providing for its **legal personality**. The seat of Cepol is at Bramshill (UK).

Cepol's **main objectives** are: 1) to increase knowledge of the national police systems and structures of other MS, of Europol and of cross-border police co-operation within the EU; and 2) to improve knowledge of international and EU instruments, in particular on the EU institutions, Europol and Eurojust. In order to achieve its objectives, Cepol has the **following tasks**: 1) to provide training sessions, based on common standards, for senior police officers; 2) to contribute to the preparation of harmonized programmes and help set up appropriate advanced training programmes for middle-ranking police officers; 3) to provide specialist training; 4) to disseminate best practice and research findings; 5) to develop and provide training to prepare EU police forces for participation in non-military crisis management and for police authorities from candidate countries.

Cepol is managed by two organs: the **Management Board** and the **Director**, assisted by a **Secretariat**. The Management Board, composed of Directors of national training institutes, adopts the programmes and training modules, as well as the annual report. It also decides on the nomination of the Director, who is responsible for the day-to-day management of the organization. The Secretariat assists CEPOL in its administrative tasks and the implementation of the annual programme. Cepol has full legal capacity and is financed from the Community budget, including its personnel, administrative, infrastructure and running costs.

Cepol, through its training activities, could play a very important role to **improve the understanding** of the MS' **legal systems** and organisations, thus **enhancing mutual trust**, as recognised by the **Hague Programme**.

## **POLICE CHIEFS TASK FORCE (PCTF)**

The **Tampere European Council Conclusions** call for the establishment of a “European Police Chiefs Operational Task Force to exchange, in co-operation with Europol, experience, best practices and information on current trends in cross-border crime and contribute to the planning of operative actions.” The **Police Chiefs Task Force (PCTF)** met for the **first time** in April **2000**. At its meeting in Copenhagen in July 2002, the PCTF agreed on the following **main functions**: 1) to promote a coordinated approach focused on cross-border criminality in the EU, based also on the Europol organized crime analyses; 2) to adopt initiatives, plan and start operations involving the participation of two or more MS; 3) to serve as a forum for the exchange of information and for discussions on crime trends and to define strategies to combat crime; 4) to make policy recommendations to the Council.

The PCTF agreed on the creation of a "**Steering Committee**" to ensure the continuity of its work by adequately preparing meetings and monitoring the follow-up of its recommendations. The Steering Committee is composed of the incumbent, the outgoing and future Council Presidencies, Europol, the Commission and the General Secretariat of the Council. The PCTF has taken a considerable number of initiatives for activities regarding the protection of the Euro, illegal immigration, trafficking in human beings, vehicle crime and child abuse. At the end of 2004, it was decided that the PCTF should in the future meet in **two different formats**: one meeting to take place **within the Council structures**, to advise on **strategic police co-operation issues**, and one **at the Europol Headquarters** to advise on **operational issues**. In that setting the PCTF also instigates and steers the so-called **COSPOL projects (Comprehensive Operational Strategic Planning for the Police)**, operational projects set up to work in conjunction with analysis carried out by Europol.

The importance of the PCTF meetings in **improving bilateral and multilateral contacts** between the leading police officials in the MS should not be underestimated. As the **leading police officials** in the Union, the European Police Chiefs play an important double role: by virtue of their proximity to ministers, they can **influence political decisions** concerning police matters, while at the same time having the competence to decide on the use of police resources.

Discussions are ongoing regarding the **consolidation of COSPOL** in the framework of the European Criminal Intelligence Model (**ECIM**) and Organised Crime Threat Assessment (**OCTA**). The issue of the PCTF **different formats** within the **Council and Europol** structures, depending on the **strategic and operational levels**, should be properly addressed.

## **JOINT INVESTIGATION TEAMS**

The Tampere European Council called for **Joint Investigation Teams (JIT)** to be set up without delay with a view to combating trafficking in drugs and human beings, as well as terrorism. The **Convention on Mutual Assistance in Criminal Matters** adopted in **May 2000** also provides for the setting-up of JIT. In view of slow progress towards ratification of the Convention by the MS, the Council adopted in **June 2002** a **Framework Decision** on Joint Investigation Teams, which the MS were to implement by 1 January 2003. This Framework Decision has no longer been applicable since the Convention on Mutual Assistance entered into force for all the MS in August 2005.

In order to carry out criminal investigations in MS which necessitate coordinated and concerted action, **at least two Member States** may set up a JIT. To that end, the competent authorities of the relevant Member States enter into an agreement determining the procedures to be followed by the Team. The joint team must be set up for a **specific purpose** and a **limited period**, which may be renewed with the agreement of all the parties involved. The MS that set up the JIT will decide on its composition, purpose and duration. They may also allow representatives of Europol and representatives of third countries to take part in the Team's activities.

**The recourse to the Joint Investigation Teams by MS is also encouraged by the Hague Programme. This is an instrument which has been rarely applied.**

## **EUROPEAN CRIME PREVENTION NETWORK (EUCPN)**

Crime prevention is an indispensable part of the work to create an area of freedom, security and justice. The Union therefore needs an effective tool to support the efforts of MS in preventing crime. To that end, the **European Crime Prevention Network (EUCPN)** was created with a **Council Decision** in **May 2001**. The role of the EUCPN is recognised by the **Hague Programme**, which states that the Network “should provide expertise and knowledge to the Council and the Commission in developing effective crime prevention policies”, while also acknowledging that the EUCPN “**should be professionalized and strengthened**”.

The EUCPN consists of a Board of **National Representatives** supported by a **Secretariat** and a Website Management Team. The objectives of the EUCPN are: to **identify good practices in crime prevention** and to **share knowledge and experience** between MS; to promote crime prevention activities by organising **meetings, seminars and conferences**; and to contribute to developing local and national strategies on crime prevention. The EUCPN focus its activities on the **prevention of general/volume crime**.

According to the EUCPN Council Decision, the EUCPN Annual Reports are submitted to the Council for approval and then are forwarded to the European Parliament. So far, **there has not been any discussion within the Parliament of the EUCPN Annual Reports**. This situation should be rectified.

## INTERPOL

Interpol is the world's largest **international police organization**, with 186 member countries. It facilitates cross-border police cooperation, and supports and assists all organizations, authorities and services whose mission is to prevent or combat crime. The **General Secretariat** is located in Lyon, France. Interpol operates six regional offices and a representative office at the United Nations in New York. Each member country maintains a **National Central Bureau (NCB)**, the designated contact point for the General Secretariat, regional offices and other member countries requiring assistance with overseas investigations and the **location and apprehension of fugitives**.

Interpol is primarily **financed by member countries**, whose governments pay annual contributions calculated using a framework agreed on by members. Interpol has identified three **core functions** 1) Secure global **police communications services**; 2) Operational data services and **databases** for police; and 3) Operational **police support services**.

Interpol has five **priority crime areas**: drugs and organized crime; financial and high-tech crime; fugitives; public safety and terrorism; and trafficking in human beings. Other areas of concern include corruption, environmental crime and property crime. Specialized working groups bring together experts to develop and promote best practice and training in specific crime investigation techniques and analysis. One of Interpol's most important functions is to help police in member countries **share critical crime-related information** using its system of international notices.

Better **cooperation** and **working arrangements** should be defined between **Interpol and Europol**. Such enhanced cooperation should take into account the different functions and activities of the two organisations.

## POLICE ASPECTS OF THE SCHENGEN COOPERATION AND SIS II

The need for improved police cooperation to counter security deficits caused by the abolition of border controls was recognized by the **Schengen Agreement signed in 1985 by five MS** and then by the **Convention** implementing the Schengen Agreement of 1990. This inter-governmental agreement on the free movement of people between EU MS has now been **integrated into the EU framework** with the Amsterdam Treaty. The Schengen police cooperation measures provide for mutual assistance and direct information exchange between police services, cross-border surveillance and pursuit of suspects, improved communication links and information exchange via central law-enforcement agencies. In addition, a **Schengen Information System (SIS)** has been operational since 1995.

The Schengen Convention provides the legislative framework for the **abolition of internal border controls**, the introduction of checks at the external borders on the basis of common standards and the rules to improve law-enforcement co-operation. **Article 39** stipulates that MS “undertake to ensure” that **police authorities shall assist each other to prevent and detect criminal offences**. The requests for assistance must be exchanged via “central bodies responsible for police co-operation”, unless the urgency of the matter justifies that requests are exchanged directly between competent police authorities. Challenges do exist however, because the competences of police in the different MS differ widely. A large number of bilateral agreements between Schengen States exist. The most comprehensive agreements are those that established permanent co-operation and information exchange structures in the form of **Joint Police Stations (JPS)** and **Police and Customs Co-operation Centres (PCCC)** at internal borders. Important trilateral forms of police co-operation have developed between the Netherlands, Belgium and Germany. **Article 46** of the Schengen Convention gives police authorities the right to **exchange information** “which may be important in helping” to prevent crime and threats to public order with another MS on their own initiative, “without being asked”. An effective means of obtaining and exchanging information is the **secondment of liaison officers**, to which article 47 refers.

A set of dedicated **data protection and data security rules** as well as an independent data protection body are part and parcel of the Schengen acquis. The links between the MS that enter SIS-data and the law-enforcement officers who identify a wanted person or object are the **SIRENE offices** in each MS. The SIRENE manual is a set of instructions to operators in the SIRENE offices of each MS which describes in detail the rules and procedures governing the bilateral or multilateral exchange of supplementary information.

The use of **biometrics** and the interlinking of alerts are two new elements in SIS II that will be introduced to improve the reliability and enhance the capacities of the system. One of the new compromise proposals is the setting up of a **Management Authority**, funded by the EU budget, to manage the operation of SIS II central data base. During a transitional period before this authority starts work, the Commission will be responsible for the management of the SIS II central data base. Personal data processing at national level would be audited by national supervisory authorities, but in cooperation with the **European Data Protection Supervisor**, who would also monitor the Management Authority’s personal data processing activities.

Two Member States of the EU, **Ireland and the United Kingdom**, have not lifted border controls with other Schengen/EU States but they have been authorised to take part in aspects of the Schengen acquis dealing with police cooperation including the Schengen Information System. Two non-EU States, Iceland and Norway, however, fully subscribed to the Schengen acquis. In view of the **enlargement of the European Union**, and to take on board the rapidly changing **technological developments** and to integrate new functional needs identified by the users of the system, the Commission has been mandated by the Council to conduct the project for the design and establishment of the **second generation** Schengen Information System (**SIS II**).

This system has experienced **some problems** concerning **technical aspects** of SIS II, **tendering procedures** and **preparation of legal instruments**, which are being negotiated by the Council and the Parliament. The Commission has reported on these problems in August 2006, thus leading to some **criticism**.

The **European Parliament** adopted, in **October 2006**, two co-decision and one consultation **reports** by MEP Carlos Coelho on proposals for the establishment, operation and use of SIS II as well as the access to the system by the services in the MS responsible for vehicle registration. The **Parliament refused** to introduce a last minute change requested by the Council which would have allowed **national intelligence services** to have access to the information stored in SIS II.

The **JHA Council of 4-5 December 2006 adopted Conclusions on the enlargement of the Schengen area**. According to the compromise reached by the JHA Ministers, the **10 new MS** will temporarily be allowed to join the current and improved Schengen Information System (**SIS I for All**) until the new version of the SIS II system is launched in June 2008. In keeping with the timetable adopted by Ministers, land and maritime border controls will be lifted in December 2007 and those in airports by 30 March 2008 at the latest. The lifting of airport border controls will occur on this date because it is the same time that the clocks go forward or back for airline connections. In their Conclusions, Ministers remain however cautious about strict respect for the timetable. Nevertheless, they say that they are “aware” of the fact that together with the technical feasibility of "SIS I for All", difficulties linked to its development could cause a delay to its implementation.

## **IMPROVEMENT OF POLICE COOPERATION BETWEEN MS AND AMENDMENT OF THE SCHENGEN AGREEMENT (FUTURE REPORT OF MEP HERBERT REUL)**

A **proposal for a Council Decision** on the improvement of police cooperation between MS of the European Union, especially at the internal borders and **amending** the Convention implementing the **Schengen Agreement**, was adopted on 18 **July 2005** by the European Commission. The proposal responds to the invitation of the Hague Programme to further develop cross-border police cooperation and also aims at amending the Convention Implementing the Schengen Agreement, by removing the limitation to land borders in the context of hot pursuit and extending the possibilities in which cross border surveillance and cross border pursuit can be carried out.

The Decision provides for a transparent, common framework within which cross-border police cooperation, especially at the common borders, is carried out and can further develop. To that end, the Decision lays down **general rules to promote strategic and operational cooperation** between law enforcement authorities, and in doing so work towards fulfilling the mandate of Article 29 TEU, i.e. to provide the citizens of the EU with a high level of safety. More specifically, this aim is met by (a) strengthening and improving information exchange on all matters concerning cooperation between law enforcement authorities; (b) taking joint action in the coordination of strategic and operative activities on a permanent basis; (c) taking joint action in carrying out operational activities, (d) extending existing cross-border capabilities and (e) providing oversight and cooperation structures to further future development. This Decision does not affect the abolition of internal border checks as laid down in Article 2 of the Schengen Convention. **Data protection** shall comply with the relevant legal provisions laid down in Title VI of the Schengen Convention. The proposal sets up a regulatory Committee to assist the Commission and lays down its tasks.

The Austrian Presidency submitted in February 2006 a **proposal for a re-draft** of the original proposal of July 2005. Since then, there has been **no action at Council level**. It is expected that under **German Presidency**, in the first semester 2007, the **proposal will be further reviewed**. The European Parliament has appointed **MEP Herbert Reul** as **Rapporteur** on this matter.

## **ACCESS FOR CONSULTATION OF THE VISA INFORMATION SYSTEM (VIS)**

A **proposal for a Council Decision** concerning **access for consultation of the** Visa Information System (VIS) by the authorities of MS responsible for internal security and by Europol for the purposes of the prevention, detection and investigation of **terrorist offences** and of other serious criminal offences was adopted on 24 **November 2005** by the European Commission.

The scope of this initiative is limited to terrorist offences and to crimes for which Europol is responsible. In addition, the proposed provisions restrict the use of VIS data to specific cases only in order to exclude routine access. Only those national authorities responsible for the prevention, detection or investigation of criminal offences will have access to the VIS, through a central access point and after receipt of a duly motivated request. Such a Decision seeks to ensure full respect for the **right to liberty and security**, the right to respect for private and family life, the right to the protection of **personal data** and the principles of legality and **proportionality** of criminal offences and penalties. The Council Framework Decision (once approved by the Council) on the protection of personal data in the third pillar, the Europol Convention and Regulation EC 45/2001 shall apply to the processing of personal data pursuant to this Decision.

The European Parliament has appointed **MEP Sarah Ludford** as **Rapporteur** on this matter.

## G-6 MEETINGS

The **G 6** is an **informal grouping of Interior Ministers from six** EU Member States: France, Germany, Italy, Poland, Spain and the United Kingdom. It meets on an ad hoc basis two or three times a year in the country holding the rotating chair. The current chair is the UK. The two last meetings of the G 6 were held in **Heiligendamm** (Germany) on 22-23 **March 2006** and in **Strafford-upon-Avon** (UK) on 25-26 **October 2006**. The first meeting of G 6 was held in 2003.

Informal groupings of MS such as the G 6 are not unique in the EU. There are a number of initiatives, which are undertaken outside the EU structures, such as the Schengen Convention or the Prüm Treaty. The main aim of the G6 is **to discuss issues of mutual interest** in the areas of **migration, organised crime and terrorism** with a view to sharing ideas and best practice while identifying **concrete actions** that can be taken forward by all six or any number of them. Recent topics of discussion have included the integration of migrants, improving the exchange of information, the principle of availability, the Schengen Convention and SIS II, the use of internet by terrorist groups, research into explosives, illegal immigration and trafficking in human beings. This is also a useful forum for discussing whether any of the ideas raised at G 6 meetings might also be explored at EU level, or even be used as the **basis of formal EU proposals**.

As an informal group, without any decision making powers or secretariat, the G 6 cannot and does **not seek to impose the outcome of its discussions on the rest of the EU**. Conclusions are made public at the end of each meeting to signal the political commitment of the six to the agreements reached during discussion but are not binding on anyone, certainly not other Member States or EU institutions. It is a forum where **ideas can be frankly discussed**, relations with important EU peers strengthened and practical co-operation improved. However, **critics fear that such an informal structure could set an EU-wide security policy in virtual secrecy**.

## THE PRÜM CONVENTION

The Convention on the "**stepping up of cross-border cooperation, particularly in combating terrorism, cross-border crime and illegal migration**" was signed in Prüm (Germany) on 27 May 2005 by Belgium, Germany, Spain, France, Luxembourg, the Netherlands and Austria. At the moment it is undergoing parliamentary ratification in those countries. Other countries have expressed their intention to join the group. The Convention envisages its own **incorporation into the EU legal framework within three years** after entering into force. It therefore raises the question of its role for the future development of this policy field.

On 22 June 2006 the **European Parliament** organised a **seminar on "The Prüm Convention: Integration or fragmentation of European Justice and Home affairs"**, at the initiative of the LIBE Committee. The seminar first aimed at debating the most important provisions of the Prüm Convention and how they relate to existing forms of cross-border cooperation. Secondly, it aimed at discussing **democratic parliamentary and judicial oversight** of such intergovernmental forms of cooperation, which are tightly linked to EU-level developments in the field. Finally, the question was raised whether **an integration "à la Schengen"** is desirable at a time when citizens regard the aim of the creation of an EU-wide area of freedom, security and justice as more and more crucial.

Like Schengen, the Prüm Convention it is a pioneering document, where a number of EU MS decide to **push ahead on an intergovernmental basis** and forge closer co-operation in home affairs matters, presumably in an effort to address obstacles in co-operation resulting from the lack of trust in a Europe of 25 and legislative paralysis in the light of the "**frozen**" **Constitution**. The Prüm Convention contains far-reaching proposals which may have significant consequences for the protection of **civil liberties and fundamental rights**. These include the establishment of national **DNA analysis files** and the automated search and comparison of DNA profiles (and fingerprinting data), the deployment of **armed air marshals**, and **joint police operations** including in emergency cases action in the territory of other contracting states without their prior consent. When operating in the territory of another contracting party, officers may wear their own national uniforms. The Treaty also promotes cross-border policing including measures such as **joint patrols, cross-border surveillance and hot pursuit**. It foresees that the authorities of a Prüm state can confer sovereign powers to officers of another Prüm state in joint operations, which then exercise their powers in accordance with the host states' laws. These provisions are modelled largely on the bilateral agreements on cross-border policing Germany concluded in recent years with its neighbours.

The Prüm Convention lies **outside of the Community/Union legal order**. Parties in the Convention however have taken care to avoid conflict and ensure compliance with their Community/Union obligations, by inserting a relevant clause. Article 47 states that: "The provisions of this Convention shall apply **only in so far as they are compatible with European Union law**. Should the European Union in future introduce arrangements affecting the scope of this Convention, **European Union law shall take precedence** in applying the relevant provisions of this Convention. The Contracting Parties may amend or replace the provisions of this Convention in view of those new arrangements resulting from European Union law'. However, and leaving issues of enforcement aside, the fact is that an initiative such as the Prüm Convention leaves the **possibility open for action that goes beyond the EU acquis** (and may or may not be compatible with it). It also acts as a motor for further integration across the EU, by setting the agenda and imposing standards that have been adopted by a group of powerful members **without necessarily democratic debate or consultation** regarding their formulation. These standards can be used as political leverage against non-participating countries. Some critics argue that with the signing of the Prüm Convention, **pure multilateralism prevailed** over the closer cooperation foreseen in the EU.

Regarding **democratic parliamentary scrutiny**, the Schengen process suffered from a number of shortcomings. The Schengen Parliaments for example ratified the Schengen Implementation Agreement but, with few exceptions, were not involved in the adoption of the substantial decisions taken by the Schengen executive committee. Also, with Prüm, **the European Parliament is circumvented by governments** at a point where it gained significant powers in this policy field.

Prüm members state that **participation to their group is open to all EU members**, and a proposal will be tabled in three years from the entry into force of the Convention leading to its incorporation into the legal framework of the EU. However, Prüm is also a reminder of the "**variable geometry**" of operational cooperation in the EU. The questions mentioned above should be considered in combination with the **principle of availability**, introduced by the Hague Programme and the **draft Council Framework Decision on the protection of personal data in the third pillar**.

At the **JHA Council of 4-5 December 2006**, Italy, Portugal, Finland and Slovenia signed a declaration in which they committed themselves to join the Prüm Treaty. At the same occasion, an agreement on the implementation of the Treaty was signed.

As regards the **future** of Prüm Convention, there are three **possible developments**: 1) incorporating the provisions of the Convention into the legal framework of the EU, as it is provided for in Article 1(4) of the Convention; 2) integrating individual provisions of the Convention into Community law; or 3) applying enhanced cooperation.

## THE PRINCIPLE OF AVAILABILITY

The **Hague Programme** introduced the **principle of availability** as an innovative approach for the exchange of information between law enforcement authorities of MS. Implemented from 1 January 2008, it should lead to a situation where “**the mere fact that information crosses borders should no longer be relevant**”. The principle of availability means that the law enforcement officer of one MS can obtain data (in the course of the exercise of his legitimate duties) from another MS, and that the law enforcement agency in the other MS will make it available for the stated purpose.

To this end, on 12th **October 2005** the **Commission** adopted a **proposal for a Council Framework Decision** on the exchange of information under the principle of availability. The purpose of this Council Framework Decision is to determine the **conditions and modalities** under which certain types of information, available to competent authorities of a MS, shall be provided to equivalent competent authorities of other MS and Europol, in order to assist them in the execution of their lawful tasks for the **prevention, detection or investigation of criminal offences**. Available information is shared either by online access, or by transfer based on an "information demand". No obligation exists to collect information by means of coercive measures.

Where, according to a national law, transfer of information requires an authorisation from an authority other than the one that controls it, the authority that controls or handles this information (the “designated authority”) shall obtain this authorisation on behalf of the law enforcement body in the other MS that needs the information. The provisions of the Framework Decision go **beyond the exchange of information provided for by the Schengen Convention** and constitute a new form of cooperation which did not previously exist.

The Framework Decision seeks to ensure full respect for the **right to protection of personal data** and the principles of **legality and proportionality** of criminal offences and penalties. It does so by authorising only national authorities competent for the investigation of criminal offences to obtain information, and by obliging the authorities involved to verify the necessity and the quality of the information. Furthermore a Committee will establish ex ante that information is only available for the equivalent competent authority. The processing of personal data pursuant to this Framework Decision will be done in accordance with the **Council Framework Decision** on the **protection of personal data** processed in the framework of police and judicial co-operation in criminal matters and the Europol Convention respectively.

It is possible to wonder how this principle will work in the light of the current **lack of trust between police authorities** in the MS. At present **police authorities are reluctant** to share information. With the principle of availability in its current form, they will be obliged to exchange data, almost automatically. However, this principle does nothing to actually enhance trust on the ground, and **it remains to be seen how it will work in practice.**

## DATA PROTECTION, INCLUDING PNR

Data protection is a central issue to any discussion on police co-operation. At the moment there is **no EU data protection framework for the third pillar**, while the European Data Protection Supervisor is responsible for the first pillar aspects of Schengen. Moreover, the substance of data protection rules may have to be revisited in the light of the **increased use of biometrics** (which constitute a very invasive form of data collection) and the increased **interoperability** of databases.

On 4 **October 2005** the **Commission** adopted a **proposal for a Council Framework Decision** on the **protection of personal data** processed in the framework of police and judicial cooperation in criminal matters (**third pillar**). This was necessary because the **Directive 95/46/EC** on the protection of individuals with regard to the processing of personal data and on the free movement of such data **does not apply** to activities that fall outside the scope of Community law such as those provided for by **Title VI** of the TEU. The proposed Framework Decision ensures that **fundamental rights**, with special attention to the right to **privacy** and to the **protection of personal data**, will be respected throughout the EU, in particular, in view of the implementation of the **principle of availability**.

On 27 **September 2006**, the **European Parliament** adopted a **resolution** drafted by **MEP Martine Roure** and endorsed the Commission proposal subject to several **amendments** designed to reinforce data privacy. The Parliament was concerned about the issue of access to personal data by non-EU countries. To date there has been **no agreement within the Council** on this Framework Decision; one of the main outstanding questions is whether it should also apply to **domestic data processing**, or only to cross-border data processing.

The issue is particularly relevant now that the **European Court of Justice** annulled, in May 2006, the existing agreements (of May 2004) between the EU and US government on the transfer of **passenger name records (PNR) data** to prevent and combat terrorism and transnational crime, following a legal case brought by the European Parliament. On 7 **September 2006**, the **Parliament** adopted a **resolution** based on the own-initiative report drafted (in July 2006) by **MEP Sophia In 't Veld** giving a recommendation to the Council on the negotiations for an agreement with the USA on the use of PNR data. On 16 October 2006, the Council adopted a Decision on the signing of an interim agreement (valid till July 2007), with the USA, which covers the processing and transfer of PNR data by EU air carriers to the US Administration. This is another example of the great importance that the **European Parliament** attaches to the **protection of fundamental rights** and respect for **privacy rules** in the fight against terrorism and serious transnational crime.

## DECISION MAKING PROCESS IN THE THIRD PILLAR

EU citizens want and deserve effective action in response to cross-border crime and terrorism. However, **decision-making** in the field of police cooperation is hampered above all by the need for **unanimity**, which is increasingly difficult to secure in a Union of 25 MS. Decision-making in the third pillar must be as effective as possible and rest on a **strong basis of legitimacy**. In this context, there are problems which should be properly addressed, such as the **limited involvement of the European Parliament** (at the moment active mainly through consultation procedure) and also the **insufficient possibilities of the European Court of Justice** to afford judicial protection to citizens. These problems would have been solved by the **Constitutional Treaty**, which is for the time being "frozen".

Against this background, on 25 **June 2006** the **European Council invited the Presidency** to explore, in the context of the Hague Programme and in close cooperation with the Commission, the possibilities of **improving decision-making** and action in the area of Freedom, Security and Justice, on the basis of the existing Treaties. The European Commission presented on 28 June 2006 its **Communication, "Implementing the Hague Programme: The Way Forward"**, which provides an excellent basis for this exercise. At their **informal meeting in Tampere on 21-22 September 2006**, JHA Ministers discussed how to improve decision-making in police cooperation matters. The transfer of these matters from intergovernmental cooperation to Community activities was discussed, but no agreement could be reached.

When the **Maastricht Treaty** was drafted, the negotiators foresaw the possibility that the Union might at a later stage wish to review how decisions are taken. **Article 42 of the Treaty on the European Union allows transfer of action in areas covered by Title VI TEU (police cooperation and judicial cooperation in criminal matters) to Title IV** of the Treaty establishing the European Community, which currently deals with border controls, visa, asylum, immigration and judicial cooperation in civil matters. Art. 42 TUE is also known as **bridging clause** or **passerelle**. When using the possibility offered by Article 42, the Council will have to decide on whether to transfer all or only part of the action under the current third pillar. A total transfer would be the simplest and clearest approach, and respond to the criteria of **effectiveness, accountability and legitimacy**. In the case of a partial transfer, the scope of the areas that are transferred to Title IV should be delineated as clearly as possible in order to avoid possible practical and legal complications as well as ambiguities. A second issue that should be decided is **what voting regime is to be adopted**. However, for particularly sensitive issues, consideration could be given to requiring unanimity in the Council, after consultation of the European Parliament.

The most effective solution could be the generalization of the **Community method**, which would include co-decision with the Parliament and majority voting in the Council. The Community method has proved to be an efficient way to reach compromise even on delicate legislative matters, such as the directive on the retention of telecommunication data.

The decision-making process was debated on 4-5 **December 2006** by the **JHA Ministers**, who adopted Council **Conclusions on the Hague Programme review**. They noted that "insufficient progress is being made in certain areas of judicial cooperation in criminal matters and police cooperation in particular". On that occasion (Council Conclusion no. 7) "The Council acknowledges that the decision making mechanisms which apply in the justice and home affairs area do not always contribute to effective and efficient decision making processes. The subject remains under consideration by the Council. This topic will be brought to the attention of the European Council at its meeting in December".

**In a resolution on the progress made in the EU towards the area of freedom, security and justice, voted by the European Parliament on 30 November 2006, the Parliament has called on the Commission to submit to the Council in 2007 the draft Decision activating article 42 TUE and bringing the provisions currently in the third pillar into the Community sphere.**

Alessandro DAVOLI