

HOUSE OF LORDS

European Union Committee

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2nd Report of Session 2013–14

# **The UK opt-in to the Europol Regulation**

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### *Sub-Committee Staff*

The current staff of the Sub-Committee are Michael Torrance (Clerk), Paul Dowling (Policy Analyst) and Alice Ryder (Committee Assistant).

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# The UK opt-in to the Europol Regulation

## Introduction

1. On 27 March 2013 the Commission published a proposal for a Regulation on the European Police Office (Europol).<sup>1</sup> This proposal will only apply to the UK if, within three months of its transmission to the Council by the Commission, which took place formally on 30 April 2013, the Government notify the Council that they wish to take part in its adoption and application—in other words, opt in to it.<sup>2</sup> In this report, prepared by the Home Affairs, Health and Education Sub-Committee,<sup>3</sup> we consider whether the Government should do so. The Government must make this decision by 30 July 2013.
2. On 20 January 2011 the Rt Hon David Lidington MP, the Minister for Europe, made a written statement on behalf of the Coalition Government in which he said “The Government will continue to honour the arrangements that are currently in place following the undertakings of the then Government Minister, Baroness Ashton, for enhanced Parliamentary scrutiny of JHA<sup>4</sup> opt-in decisions”.<sup>5</sup> Those undertakings commit the Government to taking into account the views of this Committee on whether the UK should opt in to a proposal and, where those views take the form of a report to the House, to making time for that report to be debated and, if necessary, voted on before the opt-in deadline.

## Europol

3. Europol is the EU’s law enforcement agency, which aims to achieve a more secure Europe by supporting Member States in their fight against serious organised crime and terrorism, which affects two or more Member States. It was originally established as an intergovernmental body in 1995 and became operational in 1999. It is currently constituted on the basis of a Council Decision adopted in 2009, which entered into force on 1 January 2010 and which re-established Europol as an EU agency funded through the EU

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<sup>1</sup> COM (2013) 173, *Proposal for a Regulation on the European Union Agency for Law Enforcement Cooperation and Training (Europol) and repealing Decisions 2009/371/JHA and 2005/681/JHA*, 27.3.2013, Document No 8229/13 + ADD 1, 2, 3, 4, 5 & 6.

<sup>2</sup> Protocol (No 21) to the Treaties on the position of the United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice, Article 3. Formally, the three months runs from the date that all official EU language versions of the proposal are presented to the Council by the Commission.

<sup>3</sup> The members of the Sub-Committee are listed in Appendix 1.

<sup>4</sup> Justice and Home Affairs, the commonly used expression for the matters now covered by Title V of Part Three of the Treaty on the Functioning of the European Union (TFEU).

<sup>5</sup> HL Deb 20 January 2011 col WS 20–22. The undertakings are set out in full in Appendix 1 of our report *Enhanced scrutiny of EU legislation with a UK opt-in* (2nd Report, Session 2008–09, HL Paper 25).

budget.<sup>6</sup> A draft of this measure was the subject of a report by this Committee in 2008.<sup>7</sup>

4. Europol has no executive or coercive powers to conduct investigations or make arrests in the Member States and the proposed Regulation does not change this. Europol supports the work of Member States' law enforcement authorities by gathering, analysing and sharing information and coordinating operations. It has developed expertise in tackling cross-border drug trafficking, money laundering, fraud, cybercrime, human trafficking, and the forgery of money (including euro counterfeiting), among other offences. Approximately 800 staff work at its headquarters in The Hague, the Netherlands. It works closely with law enforcement agencies in the Member States, and in non-EU partner states such as Australia, Canada, the USA and Norway, through the secondment of approximately 145 Europol Liaison Officers (ELO) to Europol's headquarters. Europol's aim is to facilitate fast and effective cooperation based upon personal contact and mutual trust both between the participating states and beyond their frontiers.
5. Europol facilitates cooperation through the production of regular assessments offering comprehensive and forward-looking analysis. These include the European Organised Crime Threat Assessment (OCTA), which profiles the structure and operation of organised crime groups, and the main types of organised crime affecting the EU, and the annual EU Terrorism Situation and Trend Report (TE-SAT), which provides a detailed account of the state of the terrorist challenge across the EU. Operationally, Europol also deals with more than 9,000 cases a year, providing analytical support through subject-focused analysis work files (AWFs) and encouraging the establishment of cross-border Joint Investigation Teams (JITs). Data sharing between Member States is facilitated by the Europol Information System (EIS), which allows national law enforcement authorities to upload information to it, to which other authorities have access.

### *European Cybercrime Centre (EC3)*

6. At the end of 2010 the Commission announced its intention to establish a European Cybercrime Centre, within existing EU structures, as part of its EU Internal Security Strategy.<sup>8</sup> In its 2011 report on this Strategy, the Committee welcomed the establishment of such a Centre and stated that it should be established within Europol and that additional resources and funding would be needed in order for it to achieve its key aims.<sup>9</sup> While the Government also supported the establishment of the Centre within Europol, they considered that it should be funded from within Europol's existing budget.<sup>10</sup> The Centre, or EC3 as it became known, was officially opened on

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<sup>6</sup> Council Decision 2009/371/JHA of 6 April 2009 establishing the European Police Office (Europol) (OJ L 121, 15 May 2009, p. 37).

<sup>7</sup> EU Committee, *EUROPOL: Coordinating the fight against serious and organised crime* (29th Report, Session 2007–08, HL Paper 183).

<sup>8</sup> COM (2010) 673, *The EU Internal Security Strategy in Action: Five steps towards a more secure Europe*, 22.11.2010, Document No 16797/10. Further information about the Centre was set out in COM (2012) 140, *Tackling Crime in our Digital Age: Establishing a European Cybercrime Centre*, 28.3.2012, Document No 8543/12.

<sup>9</sup> EU Committee, *The EU Internal Security Strategy* (17th Report, Session 2010–12, HL Paper 149), paragraph 147.

<sup>10</sup> This position is repeated in paragraphs 49 and 50 of their explanatory memorandum on the proposed Europol Regulation (EM 8229/13).

11 January 2013 and is expected to become fully operational in 2015. It is charged with assisting Member States in their efforts to detect, disrupt and dismantle cyber crime networks and will develop tools to that end and provide training. The possible development of further specialist centres is foreseen in the current draft Regulation, which the Government have concerns about because of the budgetary implications.<sup>11</sup>

## CEPOL

7. The European Police College (CEPOL, from the French name: Collège européen de police) brings together senior police officers from across the EU and aims to encourage cross-border cooperation in the fight against crime, and the maintenance of public security and law and order, through training and exchange programmes and the sharing of research and best practice. It was established as an EU agency in 2005 by a Council Decision, which entered into force on 1 January 2006.<sup>12</sup> It is currently based at Bramshill in the UK, alongside the English and Welsh College of Policing, although the Government have announced their intention to close the Bramshill site which will require the agency to relocate by March 2014.<sup>13</sup>

## The draft Europol Regulation

8. Under the pre-Lisbon Title VI of the Treaty on European Union, Council Decisions were adopted by unanimity in the Council, with a limited role for the European Parliament, so the question of an opt-in did not arise—as the UK could block a proposal if it did not support it. The new legal bases of the current draft Regulation are Article 87(2)(b) and Article 88 of the Treaty on the Functioning of the European Union (TFEU), which provide for measures for both agencies. The proposal aims to repeal and replace the earlier Europol and CEPOL Council Decisions.
9. Crucially, because it is based on Title V, Part Three, TFEU, this proposal will, unlike the earlier measures, apply to the UK only if the Government decide to opt in to it; a decision they are required to make within a period of three months from the proposal's publication. The proposal will be adopted through the ordinary legislative procedure (formerly called co-decision) by the European Parliament and by a qualified majority vote in the Council. Unlike the two Council Decisions that it intends to replace the proposal, once adopted, will be subject to the jurisdiction of the Court of Justice of the European Union (CJEU) and the Commission's enforcement powers.
10. The main changes proposed in the draft Regulation can be summarised as follows:
  - To strengthen and clarify the obligation for Member States to supply data to Europol so that it can become an EU hub for information exchange and analysis on serious crime, with Europol producing annual reports on the quantity and quality of the data supplied by Member States. Incentives may be provided to law enforcement agencies to do so through the provision of financial support to cross-border investigations.

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<sup>11</sup> Paragraph 43, EM 8229/13.

<sup>12</sup> Council Decision of 20 September 2005 establishing the European Police College (CEPOL) and repealing Decision 2000/820/JHA (OJ L 256, 1 October 2005, p. 63).

<sup>13</sup> The Scottish Police College and the Police College fulfil a similar function in Scotland and Northern Ireland, respectively.

- To enable Europol to establish links between data already in its possession and analyse this more effectively by redesigning the agency's data processing structure, which will also allow it to adapt to and accommodate future developments. The rights of individuals affected by data processing by Europol will be strengthened and the European Data Protection Supervisor will be given responsibility for external data protection supervision of Europol in place of the existing Joint Supervisory Board (a body comprised of representatives of Member States' independent data protection authorities) which will be abolished.
- To merge Europol and CEPOL into a single EU agency housed in Europol's existing headquarters in The Hague; to strengthen and combine the operational law enforcement functions with the training and education functions of both agencies; and reduce duplication and make estimated efficiency savings of €17.2 million during the 2015–2020 period, including staff costs, which could be reallocated to core operational and training functions, including the operation of EC3 and the implementation of the proposed European Law Enforcement Training Scheme.<sup>14</sup> A new department of Europol called the Europol Academy would assume the functions of CEPOL and a Scientific Committee for Training would be established to advise the Europol Management Board on technical training issues. A new deputy director for training would be appointed.
- To increase parliamentary scrutiny of Europol by the European Parliament and national Parliaments by consulting them on Europol's strategic multiannual work programme and providing them with annual activity reports, accounts, threat assessments, strategic analyses and general situation reports. In addition, the European Parliament will be responsible for discharging the implementation of the Europol budget and may also invite future candidates for Director or Deputy Director to appear before the Civil Liberties, Justice and Home Affairs (LIBE) Committee for a hearing. At present the European Parliament can request the Chairman of the Europol Management Board and the Executive Director of CEPOL to appear before it. The proposal preserves this right but explicitly provides that it has to be exercised jointly with national parliaments.

### **The position of the Committee and the Government on the proposal**

#### *The supply of data to Europol*

11. We have expressed concerns in two of our previous reports about the limited sharing of information by Member States' law enforcement agencies with Europol, as well as the limited use of Europol databases, by some Member States. We therefore welcome the draft Regulation's intention to improve the supply of data to Europol.<sup>15</sup> The Government have expressed concerns about

<sup>14</sup> This is set out in a separate Communication which was published at the same time as the proposed Europol Regulation. See COM (2013) 172, *Commission Communication on Establishing a European Law Enforcement Training Scheme*, 27.3.2013, Document No 8230/13. This is a non-legislative proposal so the UK opt-in does not apply.

<sup>15</sup> EU Committee, *EUROPOL: coordinating the fight against serious and organised crime* (29th Report, Session 2007–08, HL Paper 183), paragraph 63 and *The EU Drugs Strategy* (26th Report, Session 2010–12, HL Paper 270), paragraph 71.



what they consider to be the “wider obligations on Member States to provide data to Europol” in the proposal. They note that the words “on their own initiative” have been removed from the existing obligation on Member States to share data with Europol contained in the existing Council Decision and that the words “without delay” have also been added to the new version of this obligation. They also express concerns about the feasibility of an additional requirement on Member States to copy any bilateral information exchanges between them to Europol. While they agree that Member States should be encouraged to share information with Europol, they believe that this should continue to be on a voluntary basis, and therefore support the preservation of the existing wording in this regard.<sup>16</sup> **We believe the Government’s concerns about the obligations placed on Member States to supply data to Europol should be pursued in negotiations on the draft Regulation.**

### *Data protection*

12. We also welcome the proposal’s provisions to improve the analysis of Europol data, including checking that information for cross-references, on which we have also commented in the past.<sup>17</sup> As the data protection standards in the existing Europol Decision have caused us concern<sup>18</sup> we welcome the provisions to strengthen Europol’s data protection regime in the proposal. However, we agree with the Government’s view that the data protection provisions in the proposal, which reflect to a degree the provisions in the draft Data Protection Directive, which is still under negotiation in the Council, will remain unclear until the latter proposal has been adopted.<sup>19</sup> The House debated this Directive on 20 June 2012 and endorsed the Government’s decision to participate in this proposal.<sup>20</sup> We also note the Government’s concerns about the abolition of Europol’s existing Joint Supervisory Board, particularly because of the significant expertise that this body has built up over time.<sup>21</sup> **We hope the Government will seek to ensure in the negotiations that the data protection provisions in the draft Europol Regulation correspond to the provisions of the draft Data Protection Directive as much as possible.**

### *Merger of Europol and CEPOL*

13. In recent evidence to the Committee the Director of Europol, Rob Wainwright, expressed concerns about the proposed merger of Europol and CEPOL, primarily because of the resource implications. He also suggested that the LIBE Committee might not be supportive of such a move.<sup>22</sup> Dr Ferenc Banfi, the Director of CEPOL, also wrote to us to indicate the agency’s opposition to the proposed merger. This letter is reproduced in Appendix 2. While the Government supports the relocation of CEPOL “in

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<sup>16</sup> Paragraphs 32–34, EM 8229/13.

<sup>17</sup> EU Committee, *EUROPOL: coordinating the fight against serious and organised crime* (29th Report, Session 2007–08, HL Paper 183), paragraph 98.

<sup>18</sup> *Ibid.*, paragraph 237.

<sup>19</sup> Paragraph 41, EM 8229/13.

<sup>20</sup> HL Deb 20 June 2012 cols 1832–1851.

<sup>21</sup> Paragraph 40, EM 8229/13.

<sup>22</sup> EU Committee, *EU police and criminal justice measures: The UK’s 2014 opt-out decision* (13th Report, Session 2012–13, HL Paper 159), paragraph 243.

principle” they have concerns that the proposed merger could see training priorities losing out to operational priorities in the long-term. The Government are also sceptical about the Commission’s estimate of the degree of savings that could be achieved through the merger.<sup>23</sup>

14. The potential merger of EU agencies is anticipated in a Joint Statement on decentralised agencies, which was endorsed by the European Parliament, Council and the Commission. It states that “merging agencies should be considered in cases where their respective tasks are overlapping, where synergies can be contemplated or when agencies would be more efficient if inserted in a bigger structure”.<sup>24</sup> However, we note that in June 2012 the Commission presented a paper to the Council Standing Committee on Operational Cooperation on Internal Security (COSI), which stated that a merger of Europol and CEPOL risked “diluting training under the politically more eye catching pressures of operational law enforcement”.<sup>25</sup> **While we accept in general the possible merger of EU agencies we consider that the Commission has not yet made a convincing case for the merger of Europol and CEPOL in terms of reducing duplication, achieving efficiency savings and increasing effectiveness. We would welcome further information from the Government as to why, despite their misgivings about the proposed merger, they appear to be unconcerned about the possible relocation of CEPOL to The Hague.**

#### *Scrutiny and accountability*

15. At the end of 2010, the Commission published a Communication on the procedures for the scrutiny of Europol’s activities (but not the operational aspects) by the European Parliament together with national parliaments.<sup>26</sup> We wrote to the President of the European Parliament on 3 March 2011 regarding this Communication to support the establishment of such an arrangement but making clear our preference for this to be achieved by building on existing bodies<sup>27</sup> rather than through the establishment of new ones.<sup>28</sup> **We therefore welcome the provisions in the draft Regulation to increase scrutiny of Europol and its accountability to the European Parliament and national parliaments.** Since Rob Wainwright became Director in April 2009 our inquiry work has benefited from his willingness to engage fully with the Committee and we expect that this relationship with Europol will continue in the future.<sup>29</sup> We note the Government are cautious

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<sup>23</sup> Paragraphs 27, 28 and 48, EM 8229/13.

<sup>24</sup> Joint Statement of the European Parliament, the Council of the EU and the European Commission on decentralised agencies, 19 July 2012.

<sup>25</sup> COSI, *European Training Scheme (ETS) and the reform of CEPOL*, 15.6.2012, Document No 11506/12.

<sup>26</sup> COM (2010) 776, *Communication from the Commission to the European Parliament and the Council on the procedures for the scrutiny of Europol’s activities by the European Parliament, together with national Parliaments*, 17.12.2010, Document No 5659/11.

<sup>27</sup> These include regular meetings of Chairmen of the Justice and Home Affairs Committees of national Parliaments (COHAC) and Joint Parliamentary Meetings sometimes convened by the LIBE Committee during each EU Presidency.

<sup>28</sup> See letter from Lord Roper, the then Chairman of the EU Committee, to James Brokenshire MP, Security Minister, dated 3 March 2011. Available at: <http://www.parliament.uk/documents/lords-committees/eu-sub-com-f/cwm/CwMSubFDec10-May11.pdf>. The Committee also wrote to Jerzy Buzek, the then President of the European Parliament, in similar terms.

<sup>29</sup> His term of office was extended on 15 April 2013 for another four years.



about the potential disclosure of classified information to such a forum and that they will seek assurances in this respect during the negotiations.<sup>30</sup>

### *Governance structure*

16. The proposal largely maintains Europol's existing governance structure. In the past we have recommended that the Chair of the Europol Management Board should be decoupled from the rotating EU Presidency and that all members of the Board should be eligible to elect the Chair, for a longer period than one and a half years, renewable once.<sup>31</sup> We are pleased to note that this approach is reflected in Article 16 of the proposal and note that the Government are also supportive of this provision.

### *The UK's 2014 opt-out decision*

17. Under Protocol 36 to the EU Treaties, the Government must decide whether or not the UK should continue to be bound by around 130 EU police and criminal justice (PCJ) measures, which were adopted before the Treaty of Lisbon entered into force in 2009, or whether it should exercise its right to opt out of them all. That decision must be made at the latest by 31 May 2014. If the Government decide to exercise the opt-out then it may seek to rejoin any of the measures, subject to the conditions set out in the Protocol. On 15 October 2012, the Home Secretary said the Government's "current thinking" was that the UK should opt out of all the pre-Lisbon measures and negotiate to rejoin individual measures where that is in the national interest. We published a comprehensive report on the opt-out decision on 23 April 2013, which concluded, among other things, that the Government had not made a convincing case to exercise the opt-out.<sup>32</sup> We draw on some of its content below.
18. Our witnesses for that inquiry were generally very positive about Europol's role<sup>33</sup> and when we took evidence from Rob Wainwright on 29 January 2013 he set out what were, in his view, the significant benefits that UK police and law enforcement agencies currently enjoyed through their participation in Europol, as well as the potentially negative consequences of withdrawing from it for those agencies. The benefits included access to Europol's information, analysis, intelligence and support, as well as the efficient and cost-effective arrangement of having access to 40 countries<sup>34</sup> in one place rather than cooperating through a network of bilateral arrangements. The negative consequences of withdrawal from Europol included the risk of serious crimes not being detected or prevented in the UK, as well as increased risks to public safety as a result.<sup>35</sup> He also emphasised that approximately 50 per cent of Europol's operational casework involved the UK. We agreed with the Director and the other witnesses' view about the benefits provided by Europol and recommended that the UK should continue participating in the

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<sup>30</sup> Paragraph 42, EM 8229/13.

<sup>31</sup> EU Committee, *EUROPOL: coordinating the fight against serious and organised crime* (29th Report, Session 2007–08, HL Paper 183), paragraphs 134 and 136.

<sup>32</sup> EU Committee, *EU police and criminal justice measures: The UK's 2014 opt-out decision* (13th Report, Session 2012–13, HL Paper 159).

<sup>33</sup> *Ibid.*, Paragraph 193.

<sup>34</sup> The 27 EU Member States and 13 non-EU partner states that Europol cooperates with.

<sup>35</sup> EU Committee, *EU police and criminal justice measures: The UK's 2014 opt-out decision* (13th Report, Session 2012–13, HL Paper 159), Paragraphs 194 and 195.

agency whether or not the opt-out was exercised.<sup>36</sup> If the Government were to opt in to the current Europol proposal we urged them to take care to avoid any gaps developing between the opt-out, if it is exercised, taking effect on 1 December 2014 and the new proposal entering into force, which may not necessarily be realised before this date.<sup>37</sup>

19. When we took evidence from the Rt Hon Theresa May MP, the Home Secretary, on 13 February 2013, she praised the work of Europol and suggested that the UK's continued involvement in Europol would be determined separately from the opt-out decision saying "I do not believe Europol ... will be in the list".<sup>38</sup>
20. If the Government were to exercise their right to opt in to the proposal, and it took effect before December 2014, then the two Council Decisions that the proposal would replace would no longer fall within the scope of the opt-out decision. However there are four other Council Decisions which may not be repealed and replaced by the current Europol proposal and which Europol told us are "directly connected" with the Europol Council Decision and, presumably, will continue to be connected to the European Regulation, once adopted.<sup>39</sup> Article 78 of the proposal says that "All legislative measures implementing the [Europol and CEPOL Council] Decisions ... are repealed with effect from the date of application of this Regulation" but the Government consider this provision to be "ambiguous" and they intend to seek clarity on this issue during the negotiations.<sup>40</sup> **If the Government were to opt in to the draft Europol Regulation and also exercise the block opt-out we urge them to opt back in to the Council Decisions which fall within the scope of the opt-out and which are connected with Europol's continued operations, should this prove necessary.**

### Should the Government opt in?

21. On 3 May 2013 the Home Office submitted to us a very full explanatory memorandum (EM) on the draft Regulation, for which we are grateful. They note that the proposal does not "significantly expand" Europol's existing powers, which they welcome, but also consider the proposed merger of Europol and CEPOL as the "most significant" provision in the proposal.<sup>41</sup>
22. The EM explains that the Government are committed to taking all opt-in decisions on a case-by-case basis, putting the "national interest" at the heart of their decision-making. They list the following factors as being relevant to

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<sup>36</sup> *Ibid.*, Paragraphs 208 and 245.

<sup>37</sup> Paragraph 246.

<sup>38</sup> Paragraph 242.

<sup>39</sup> These are: Council Decision 2009/934/JHA of 30 November 2009 adopting the implementing rules governing Europol's relations with partners, including the exchange of personal data and classified information (OJ L 325, 11 December 2009, p. 12); Council Decision 2009/935/JHA of 30 November 2009 determining the list of third countries with which Europol shall conclude agreements (OJ L 325, 11 December 2009, p. 6); Council Decision 2009/936/JHA of 30 November 2009 adopting the implementing rules for Europol analysis work files (OJ L 325, 11 December 2009, p. 14); Council Decision 2009/968/JHA of 30 November 2009 adopting the rules on the confidentiality of Europol (OJ L 332, 17 December 2009, p. 17). All of these measures entered into force on 1 January 2010, at the same time as Council Decision 2009/371/JHA.

<sup>40</sup> Paragraph 1, EM 8229/13.

<sup>41</sup> Paragraphs 25 and 26, EM 8229/13.

the Government's consideration of whether or not to opt in to the Regulation.<sup>42</sup> These are:

- Whether the proposal as drafted would benefit the security of the UK and its citizens including the protection of their civil liberties and rights;
  - The implications for the balance of UK and EU competences, particularly in relation to operational policing and serious organised crime as well as the wider implications of the CJEU having jurisdiction in this area; and
  - The extent to which the proposal can be improved in negotiations and the degree to which the prospects of improving the text would be enhanced were they to opt-in and thus have a vote on its adoption, which will be balanced against the implications of not opting in for the UK's broader relationship with the EU, its Institutions and the other Member States, particularly in the field of police cooperation.
23. We agree that these are important considerations. It is not unusual for a proposal for legislation to raise questions of substance at an early stage, like those mentioned above, alongside the Government's concerns about specific provisions in the proposal that are considered elsewhere in this report. These are best resolved in the course of negotiations, and the Government will be able to play a fuller part in those negotiations if they have opted in.
24. These are issues that we will continue to consider more closely in the course of our scrutiny of the proposal. But in our view none of the concerns expressed by the Government in their EM outweigh the benefits to the UK of Europol's assistance to national police and law enforcement agencies in the fight against cross-border threats (including terrorism) and serious organised crime. **It is our considered view that the Government should opt in to the draft Europol Regulation.**

### Debate on this report

25. As part of the undertakings described in paragraph 2, the Minister for Europe gave a commitment that, where there was strong parliamentary interest, the Government would set aside time for a debate in both Houses on its proposed approach to opting-in to a particular draft measure. The Government's EM not only confirms that this will be the case in relation to this proposal but states that they are focusing their efforts on "ensuring a successful debate".<sup>43</sup>
26. We welcome the fact that the Government have undertaken to make time for a debate on this report, and hope that this can take place as early as possible in the 2013–14 Session, and in any case well before the expiry of the time limit for the Government to decide whether or not to opt in on 30 July 2013. An early debate on this report will allow the Government to be fully aware of the views, not just of this Committee, but of the House as a whole, before they have to reach this decision. **We make this report to the House for debate.**
27. We retain the proposed Europol Regulation under scrutiny.

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<sup>42</sup> Paragraphs 20 and 21, EM 8229/13.

<sup>43</sup> Paragraph 22, EM 8229/13.

## APPENDIX 1: LIST OF MEMBERS AND DECLARATIONS OF INTEREST

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The Members of the Sub-Committee that conducted this inquiry were:

Baroness Benjamin  
 Lord Blencathra  
 Viscount Bridgeman  
 Lord Hannay of Chiswick (Chairman)  
 Lord Judd  
 Lord Mackenzie of Framwellgate  
 Lord Morris of Handsworth  
 Baroness Prashar  
 Lord Sharkey  
 Earl of Stair  
 Lord Tomlinson  
 Lord Wasserman

### Declarations of Interest

Baroness Benjamin  
*No relevant interests*

Lord Blencathra  
*No relevant interests*

Viscount Bridgeman  
*Former Chairman (unpaid) of the Hospital of St John & St. Elizabeth*  
*Joint President, Reed's School*

Lord Hannay of Chiswick  
*Member, Advisory Board of the Centre for European Reform*  
*Member, The Future of Europe Forum, the proactive advisory board for the*  
*Centre for British Influence through Europe*

Lord Judd  
*Emeritus Governor of the London School of Economics and Political Science*  
*Life Member of Court, Lancaster University*  
*Member of Court, Newcastle University*  
*President of the West Cumbria Hospice at Home*  
*Member of the All Party Parliamentary Group on Human Rights*  
*Member of the All Party Parliamentary Group on Penal Affairs*  
*Member of the All Party Parliamentary Group on Police*  
*Trustee, Saferworld*

Lord Mackenzie of Framwellgate  
*Non-executive Director, Eximious Ltd (business and security consultancy)*  
*Managing Director, Mack Diligence Limited (security consultancy)*  
*Security Consultant, Dynamiq Limited (security consultancy)*

Lord Morris of Handsworth  
*No relevant interests*

Baroness Prashar  
*Member of the Committee appointed to consider UK's involvement in Iraq*  
*President, Royal Commonwealth Society*  
*Vice Chair, All-Party Parliamentary Group for the Commonwealth*  
*President, UK Council for International Student Affairs*  
*President, Community Foundation Network*

*Trustee, Cumberland Lodge*  
*Governor and Member of Management Committee, Ditchley Foundation*  
*Patron, Runnymede Trust*  
*President, National Literacy Trust*

Lord Sharkey

*Governor, Institute for Government*

Earl of Stair

*No relevant interests*

Lord Tomlinson

*No relevant interests*

Lord Wasserman

*Former Government advisor on policing and criminal justice matters*

The following Members of the European Union Select Committee attended the meeting at which the report was approved:

Lord Boswell of Aynho  
Lord Bowness  
Baroness Corston  
Lord Dear  
Baroness Eccles of Moulton  
Lord Foulkes of Cumnock  
Lord Hannay of Chiswick  
Lord Harrison  
Lord MacLennan of Rogart  
Baroness Parminter  
Earl of Sandwich  
Baroness Scott of Needham Market  
Lord Tomlinson  
Lord Tugendhat  
Baroness Young of Hornsey

A full list of Members' interests can be found in the Register of Lords Interests:

<http://www.parliament.uk/mps-lords-and-offices/standards-and-interests/register-of-lords-interests/>

## APPENDIX 2: LETTER FROM DR FERENC BANFI, DIRECTOR OF CEPOL, TO THE COMMITTEE, 16 APRIL 2013

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Thank you for contacting CEPOL on the issue of the new draft regulation on the European Agency for Law Enforcement Cooperation and Training (EUROPOL).

The draft Regulation encompasses the creation of a new Department at Europol, tasked with implementing the current tasks of CEPOL, which would consequently be absorbed into the new structure. The CEPOL Governing Board has established its rejection in principle of the new legal instrument.

We would like to stress, *ab initio*, that synergies between CEPOL and EUROPOL are already at their strongest point ever, especially with regard to cooperation on EU cooperation instruments and structures, where 1/3 of CEPOL's overall training portfolio is already aligned with Serious and Organised Crime Threat Assessment priorities; duplication of support functions does not exist at the moment, as each Agency administers its workload independently. CEPOL maintains that results of cooperation with EUROPOL are currently excellent not least due to the clear segregation of tasks currently existing between the two agencies, one based on a network of operational law enforcement bodies, the other on a network of training institutes.

In particular, the Member States (at the level of the CEPOL Governing Board) have highlighted their perplexity in merging an education-focused institution such as CEPOL, with a criminal intelligence focused organisation like Europol, as this may result in Training losing autonomy and relevance in a context in which more effective European law enforcement cooperation is required.

It is believed that the provisions in the current draft Regulation are not sufficient to guarantee the continued investment in training which Member States deem necessary, especially in light of the new tasks which may be attributed to the Agency by the Communication on the European Law Enforcement Training Scheme.

Specifically, we would like to draw your attention to the fact that while Europol's budget shall increase from approximately 99 Million Euros to approximately 108 Million Euros between 2015 and 2020, Article 76 of the draft Regulation reserves a minimum of 8 Million Euros for training purposes, only for the three years following the adoption of the Regulation. Hence, there is no guarantee that European training will receive an adequate financial subsidy thereafter, in spite of the many calls to enhance the European dimension of law enforcement training across the EU. For a more complete context, please take into account that the CEPOL budget 2013 amounts to 8.341 Million Euros—a very lean budget when compared to other EU agencies.

Secondly, the draft Regulation fails to substantiate the supposed savings resulting from a merger. If anything, the proposal is simply budget-neutral in terms of staff only, as admitted by the European Commission itself in its Impact Assessment ([http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=SWD:2013:0099\(51\):FIN:EN:PDF](http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=SWD:2013:0099(51):FIN:EN:PDF))

In fact, the stated intention of the Commission is to cut 14 posts and reallocate 12 of those to “core business activities”. However, this is predicated on the supposed capacity of the current structure of Europol to take over all administrative and financial tasks carried out by CEPOL's Corporate Services. The process followed by the Commission in the identification of those posts susceptible to redundancy



have not been explained, nor has to our knowledge the Commission substantiated the capacity of Europol to take on board the added tasks without the need for new resources.

What the draft Regulation appears not to take into full account is that the creation of new bodies (an Executive Board made up of 5 individuals and a Scientific Committee composed by 11 experts meeting 4 times per year) may actually increase administrative expenditure and create more cumbersome governance, rather than generate savings. Furthermore, the costs of relocating CEPOL staff and equipment to The Hague appears to be largely underestimated, and may easily reach hundreds of thousands of Euros, not to mention the potential for payment of severance grants.

On Governance specifically, we would like to remark that the new Regulation does not satisfy the necessity to give a voice to the Training constituency in the proposed new agency. The designation of alternate members of the new Management Board specifically for training issues seems to suggest a “junior” standing for those when compared to the “full members”. Furthermore, it violates the prerogative of Member States to designate whomever they wish as member of the Management Board and even imposes an “assessment of knowledge”—whatever that means—as a prerequisite for appointment. The provision may prove impractical if not impossible to implement.

In fact, according to current EUROPOL Management Board Rules of Procedure (r.o.p) and in line with art. 13 of the draft Regulation, the task of the alternate members is to represent full members (i.e replace). In reality, this would mean that the training constituency would not be systematically represented at the Europol management board but only in the case of absence of the “full” member. The presence of training experts at Board meetings would be left more or less to sheer chance. Should instead alternate members always be present at Board meetings alongside full members, costs obviously would be higher.

We would like to remark that, in June 2012, the European Commission financed and endorsed a report by an independent consultancy company (GHK Consulting), and presented a document to the Council Standing Committee on Operational Cooperation on Internal Security (COSI) stating the following (ref. Council doc. 11506/12 COSI 47 ENFOPOL 195) in relation to the option of merging, albeit partially, the two agencies:

“the approximate cost saving of a partial merger could bring approximately 1,2 M€ annual saving, but at Commission services’ level, this is not preferred option, since that this option presents the following drawbacks: (i) making an “independent” agency dependent on the Human Resources department of another independent agency will not work, (ii) it will be a rather complex situation (move people, recruit people, the stresses of a fusion, the complexity of the relationship between the two agencies). Furthermore, in terms of full merger there could be some cost-savings but it can create new problems because these structures have different organizations and expertise. The risk of downscaling learning activities triggered by the predominant focus on operational matters. EU instruments and agencies are not used well enough for lack of knowledge. At Commission services’ level, this is not the preferred option since we consider that a total fusion with Europol runs the risk of diluting training under the politically more eye catching pressures of operational law enforcement.”

Lastly, we would like to recall the Draft Resolution for the 2011 Budget Discharge Report issued by the European Parliament's Committee on Budgetary Control which states as follows, *inter alia*:

- (16) Commends the College's efforts to improve its performance without a budget increase, and the results it has achieved; congratulates it, moreover, on responding comprehensively to Parliament's requirements and to the current budgetary challenges by radically reducing its governing costs;
- (17) Commends the College's efforts in streamlining and improving the efficiency of its governance, for example through the implementation of measures to disband committees and the reduction of the number of Governing Board meetings per year which should now focus essentially on policy and decision-making at a strategic and long-term level;

As well as the Opinion issued, in the context of the same budgetary discharge procedure, by the European Parliament Committee on Civil Liberties, Justice and Home Affairs in which the Committee:

- (5) Commends CEPOL's efforts to improve its performance without a budget increase, and the results it has achieved; congratulates it, moreover, on responding comprehensively to Parliament's requirements and to the current budgetary challenges by radically reducing its governing costs;
- (6) Takes note of the fact that CEPOL has received a guarantee from the UK Government that it can remain in its premises in Bramshill until 1 March 2014; calls on the Council speedily to designate a new location for CEPOL's headquarters that will afford it the best possible conditions;
- (7) Recalls that CEPOL has made significant progress and the number of participants in training courses and exchange programmes increased significantly over the last years; therefore expresses its support for maintaining CEPOL as an independent agency.

I would like to take this opportunity to thank you for your interest in CEPOL and I am looking forward to working more closely together in the future.