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These Briefings have been drafted by the Parliament Secretariat Task Force on the Intergovernmental Conference. Their purpose is to gather together, in an organized, summary form, the proposals and suggestions which the authorities in the Member States, the Union's institutions and specialist commentators have put forward on the issues likely to be on the IGC/96 agenda.

Briefings will be updated as negotiations proceed.

Already out:

1. The Court of Justice
2. The Commission
3. The Court of Auditors, ESC and COR
4. Differentiated integration
5. The common foreign and security policy
6. The role of the national parliaments
7. The hierarchy of Community acts
8. Codecision procedure
9. CJHA
10. European citizenship
11. WEU, security and defence
12. Public services
13. Social policy
14. The European Parliament
15. The European Council
16. The Council of the European Union
17. The budget and the IGC
18. The IGC and transparency
19. Subsidiarity and demarcation of responsibilities
20. The Union's legal personality
21. Commitology
22. Fundamental rights
23. The IGC and the democratic nature of the Union
24. The coherence of the external action of the EU under the first and second pillars
25. The 1996 IGC and the effectiveness of the Union
26. Europol
27. The IGC and the Schengen Convention
28. Combating fraud
29. Energy policy
30. Tourism and the IGC
31. Economic and social cohesion
32. European environmental policy and the IGC
33. The CAP and the IGC
34. Civil protection and the IGC
35. Non-discrimination on sexual grounds
36. EU enlargement
37. Employment and the IGC
38. The IGC and Economic and Monetary Union

CONTENTS

	<u>Page</u>
I. SUMMARY	4
II. COUNCIL ACT OF 26 JULY 1995 DRAWING UP THE EUROPOL CONVENTION	5
III. VIEWS OF THE MEMBER STATES	
1. Belgium	5
2. Germany	6
3. Spain	7
4. Italy	8
5. Luxembourg	8
6. Netherlands	8
7. Austria	9
8. Portugal	10
9. Finland	10
10. Sweden	10
11. United Kingdom	11
IV. VIEWS OF THE COMMUNITY INSTITUTIONS	
1. Parliament	12
2. Council	12
3. Commission	14
4. Reflection Group	15
V. OTHER POINTS OF VIEW	
1. Discussions on the post-Maastricht phase by W. Bruggeman . . .	16
2. Europol: desired or tolerated? by W. Bruggeman	16
VI. BIBLIOGRAPHY	17

BRIEFING ON EUROPOL

I. SUMMARY

The principal legal basis for the establishment of Europol is to be found in the Treaty on European Union (TEU).

Article K.1(9) of the TEU provides for: 'police cooperation for the purposes of preventing and combating terrorism, unlawful drug trafficking and other serious forms of international crime, including if necessary certain aspects of customs cooperation, in connection with the organization of a Union-wide system for exchanging information within a European Police Office (Europol)'.

Europol thus forms part of broader cooperation among the Member States in the fields of justice and home affairs (third pillar).

That is why some Member States — such as Belgium, Spain, the Netherlands, and Austria — have laid greater emphasis on the need to 'Communitarize' the third pillar and strengthen cooperation in the fields of justice and home affairs.

Other Member States, however, have spelt out their attitude to Europol proper, including Germany, Italy, and Finland, which are in favour of genuine cooperation between the police forces of the Member States. By contrast, the United Kingdom expressed its opposition at the Cannes European Council (on 26 and 27 June 1995) and later refused to accept the Protocol which transferred competence for interpreting the Europol Convention from national courts to the Court of Justice. However, particularly in recent times, the UK Government has been talking about abandoning the 'non-cooperation policy' which it has pursued up to now. This new approach enabled the European Police Office to be given the official 'seal of approval' at the Florence European Council in late June 1996.

In contrast to the continuing lack of real political consensus, there has been an unexpected upsurge of public support. In a survey conducted recently by the Public Opinion Monitoring Unit, most of those interviewed were in favour of the Union taking all decisions in the following areas: combating drug trafficking (77%); asylum policy (59%); and immigration policy (58%). Seventy-three per cent felt that by 2010, Member States would have achieved a high level of cohesion with regard to policy on combating terrorism and organized crime.

The Community institutions are decidedly in favour of Europol. Parliament considers it essential above all for Europol to be armed with the necessary operational power, and the Council has adopted a very detailed joint action which is discussed on page 9 of this Briefing.

The Commission makes no specific comment about Europol in either its report on the operation of the Treaty on European Union or an opinion produced subsequently, focusing rather on the third pillar.

Lastly, the Reflection Group believes that the objectives of Title VI need to be spelt out more clearly, since this would enable phenomena such as organized crime, drug trafficking, and terrorism to be tackled as effectively as possible.

II. COUNCIL ACT OF 26 JULY 1995 DRAWING UP THE CONVENTION BASED ON ARTICLE K.3 OF THE TREATY ON EUROPEAN UNION, ON THE ESTABLISHMENT OF A EUROPEAN POLICE OFFICE (EUROPOL CONVENTION)

The objective assigned to Europol is to improve 'the effectiveness and cooperation of the competent authorities in the Member States in preventing and combating terrorism, unlawful drug trafficking and other serious forms of international crime'.

Each Member State has to set up, or designate, a national unit: these units will provide the only channel of liaison between Europol and the national authorities concerned.

Every national unit must second at least one liaison officer to Europol: the officers' task will be to represent the interests of their parent units.

Europol, which has legal personality, will make use of the computerized information system set up and regulated in accordance with Title II of the Convention.

The organs of Europol are:

- the Management Board, consisting of representatives of the Member States, which must meet at least twice a year;
- the Director: appointed by the Council, he is Europol's legal representative and assisted by Deputy Directors, the number of whom is determined by the Council;
- the Financial Controller;
- the Financial Committee.

The provisions relating to Europol's headquarters are laid down in an agreement between Europol and the Netherlands.

III. VIEWS OF THE MEMBER STATES

1. BELGIUM

In the policy note to Parliament on the 1996 Intergovernmental Conference the Belgian Government calls for a transfer of powers whereby the first pillar (Treaty establishing the European Community) would encompass those third pillar matters connected with Community responsibilities (the provisions on cooperation in the fields of justice and home affairs), which include measures to combat drug abuse, which themselves have a bearing on the free movement of goods.

The policy note does not take up a clear position on Europol in particular, but asserts that the Member States need to work more closely together where second and third pillar matters are concerned.

Memorandum from Belgium, the Netherlands and Luxembourg

The cooperation on crime provided for under the third pillar can only be put into practice if the necessary measures are taken with regard to:

- the preparation of decisions;
- closer involvement of all the Community institutions in the taking of decisions on matters coming under the third pillar (joint right of initiative for the Commission; right to be consulted on all legislative proposals for Parliament), with compulsory notification of national parliaments in proper time;
- the adoption of decisions;
- implementation.

Furthermore, it must be made clear to what extent the decisions taken are compulsory (reference is made to the 'directive' concept which applies under the first pillar) and in what areas they should be taken by a qualified majority or on the basis of a variant of 'consensus minus'.

Given that the pre-established objectives are to be achieved by means of cooperation between the Member States, the latter must be responsible for implementing the decisions taken. At the same time, however, uniform application of the rules must be guaranteed by giving the Court of Justice a similar role to that which it plays in the preliminary rulings procedure, which guarantees the unity of Community law.

2. GERMANY

A. ATTITUDE OF THE FEDERAL GOVERNMENT

- On 11 November 1994 the ruling parties, the CDU, the CSU, and the FDP, adopted a coalition agreement, point VII of which, entitled 'Europe, foreign policy, security, and defence', sets out the broad lines of Federal government policy towards Europe. One of the objectives which German policy is aiming to pursue in Europe is prevention and suppression of international crime, making use not only of increasingly close judicial and customs cooperation among the Member States, but also of the operations undertaken by Europol.

- The same message was given by the Minister for Foreign Affairs, Klaus Kinkel, in a speech on 21 February 1995 in which he declared that expansion of Europol would be a priority for the Federal Government in the run-up to the 1996 IGC.

- The Federal Government also believes that Europol should be consolidated because this would make for more effective implementation of the Schengen Agreement and the resulting agreements relating to external borders.

B. ATTITUDE OF THE *LÄNDER*

The *Länder* are helping to shape German thinking in anticipation of the 1996 IGC. On **3 March 1995** Mr Karl-Heinz Klär, the State Secretary who will represent the *Länder* at the Conference, announced the **conclusions adopted by the Conference of Ministers for European Affairs on 16 February 1995**.

One of the key points in those conclusions is the call for the main responsibilities for justice and home affairs to be transferred from the sphere of intergovernmental cooperation and brought within the purview of the EC Treaty.

C. FUNDAMENTAL ATTITUDES OF POLITICAL PARTIES AND *BUNDESTAG* GROUPS

- Among the various opinions being expressed, those of the CDU-CSU *Bundestag* Group are particularly significant.

On **1 September 1994** the CDU-CSU Group unveiled a **manifesto** containing a plan for sweeping reform of the Union and charting priorities, including the fight against organized crime.

- Karl Lamer, international policy spokesman for the CDU Group, is the author of a **discussion paper**, published on **13 June 1995**, on the rule of law at European level, relating primarily to the third pillar.

The paper sets out to:

(a) analyse the imperfections which have been shown to exist in the present system, stemming above all from the lack of intergovernmental cooperation. To remedy this situation, all the matters listed in Article K.1 should be placed on a more solid institutional footing;

(b) devise a workable integrated system to combat organized crime;

(c) propose ways of harmonizing national laws with a view to clarifying the definition of an offence and the procedure to follow, especially when dealing with more serious forms of international crime such as terrorism and arms trafficking;

As regards the police, the hope is expressed that the Europol Convention will be swiftly concluded and Europol itself provided with greater powers to enable it to operate more effectively.

3. SPAIN

The programme for Spain's presidency of the Union points to the need to strengthen police cooperation in order properly to protect the public against terrorism, international crime, and drug trafficking.

The document submitted jointly by the government and the bicameral committee maintains that the problem of security is one of the main obstacles which must be overcome on the way to effecting a 'reconciliation with the general public', which is the main goal to be pursued in the home affairs field.

Furthermore, the current problems with regard to internal security are mainly due to the fact that the Member States operate alone, while crime has become an international phenomenon.

The credibility of common policies and cooperation arrangements depends on the preservation of internal cohesion, which is difficult to achieve using the methods and means currently available (explicit reference is made to Article K.1, which is said to be too superficial, and Article K.9 - regarding the 'crossover' (*passerelle*) procedure - , which is difficult to apply).

Among the issues which it feels can only be dealt with by means of close cooperation between the police forces of all the Member States, Spain accords prime importance to that of combating terrorism, which often transcends national borders.

4. ITALY

- On 23 February 1995 the Italian Government put forward its foreign policy guidelines in a communication to the Chamber of Deputies.

The document maintains that judicial and police authorities need to work in closer cooperation in order to fight international crime and, above all, corruption. It therefore recommends gradual integration of the Member States' judicial systems and police forces.

- The same proposals were set out in the Joint Declaration of 15 July 1995 by the Italian and German Foreign Ministers on the 1996 IGC. In that Declaration Italy also announced that it would submit a proposal to simplify decision-making procedures relating to immigration and call for Community procedures to be used more frequently to deal with matters falling under the third pillar in general.

- Finally, the parliament set out its views in a document of 12 December 1995, in which it undertook to give effect to the European legal area by transferring key aspects of law enforcement and internal security policy, including Europe-wide measures to combat organized crime, to the European sphere of responsibility and, not least, making explicit provision for a European police force.

5. LUXEMBOURG

Government memorandum of 30 June 1995 on the 1996 IGC

The Luxembourg Government feels that cooperation in the fields of law enforcement and home affairs should be stepped up. In particular, it feels that Article 100c, which allows the Commission to take the initiative and provides for qualified majority voting, should be applied in the areas listed in Article K.1.

6. NETHERLANDS

On 23 May 1995 the Netherlands Government submitted a very detailed memorandum on justice and home affairs.

The Government takes the view that none of the matters listed in Article K.1, in other words, including measures to combat organized crime and drug trafficking, can be approached from a purely national perspective. On the contrary, they require effective cooperation among the Member States at judicial, customs, and police level.

- After reviewing the results achieved to date as regards immigration, the fight against international crime, and judicial cooperation, the document comes to the conclusion that the performance has been fairly poor compared with the initial work programme.

- This situation is due to a number of problems stemming above all from the unanimity rule, the lack of detailed objectives, inefficient decision-making, the failure to draw up multi-annual work programmes, the modest role of the Commission, and the fact that there is no proper funding.

- The memorandum also puts forward some proposals to overcome the above drawbacks:

(a) there should be a more resolute drive to Communitarize the areas referred to in Article K.1, if need be by making use of the 'crossover' (*'passerelle'*) provided for in Article K.9;

(b) the objectives of the Treaty should be more clearly defined: Article K.1 should not merely list the areas of operations, but specify in detail what targets are to be attained and what financial resources used to do so;

(c) multi-annual work plans should be drawn up in order to lend greater continuity to programmes related to the third pillar;

(d) funding systems should be clarified: it will accordingly be necessary to specify in each instance whether the expenditure in question should be charged to a Community budget or an intergovernmental budget and, if the latter is the case, what procedures should be followed;

(e) the memorandum calls in addition for more active involvement of the European Parliament and the national parliaments, a more decisive role for the Court of Justice, and greater energy on the part of the Commission in exercising its right of initiative;

(f) lastly, it proposes that decision-making procedures be simplified and rationalized.

7. - AUSTRIA

When it outlined the main thrust of its policy as regards the third pillar, Austria called for a clearer-cut demarcation of responsibilities with respect to measures to combat drug abuse and organized crime.

8. PORTUGAL

In a document drawn up by the Ministry for Foreign Affairs in March 1996, Portugal says that international criminal organizations are hampering efforts to ensure the safety of citizens within the Union and that a collective response is required on the part of all the Member States.

9. FINLAND

Report of 14 February 1995 from the Government to the Finnish Parliament on the substance of government European policy

This document dwells, among other things, on the importance of living in a safe Europe, and the Finnish Government accordingly declares that it will support all moves aimed at protecting the public more securely against organized crime and drug trafficking.

Foreign Ministry memorandum of 18 September 1995 on the views of the Finnish Government with regard to the 1996 IGC

Finland believes that the Europol Convention has to enter into force as quickly as possible.

It is also in favour of the establishment of a European legal area.

Finland's basic position on the Intergovernmental conference. Report of 27 February 1996

The Finnish Government is unhappy with the manner in which cooperation between the Member States has been conducted, and is critical of the difficulties experienced in giving practical effect to the basic provisions of Title VI regarding the third pillar.

One of the main obstacles is the unwillingness shown by Member States to abandon the principle of individual action in cases where national sovereignty is directly affected. This is often the case with police operations carried out within a Member State's territory.

Furthermore, democratic control of decisions taken under the third pillar should also be strengthened by giving the European Parliament a more central role in the decision-making process and, at the same time, ensuring that the national parliaments are more closely involved.

10. SWEDEN

The written communication from the Swedish Government on the 1996 IGC, issued on 30 November 1995, underlines the seriousness of the problem posed by international crime.

Sweden therefore believes that the Member States must work together to find new ways of combating drug trafficking and the other forms of organized crime. Cooperation of this type is already proceeding in connection with the third pillar, but Sweden feels that it should be rationalized and strengthened.

11. UNITED KINGDOM

The United Kingdom adopted a critical attitude to Europol at the Cannes European Council on 26 and 27 June 1995 and has repeatedly shown that it does not believe in the feasibility of closer cooperation between EU Member States.

In the document submitted to the parliament by the Foreign and Commonwealth Office in March 1996, however, the UK Government notes the progress made to date on matters coming under the third pillar, with particular regard to measures to combat crime.

Closer cooperation between police forces is proving effective in making it more difficult for criminal organizations to take advantage of differences between the laws of the various Member States.

The agreements on specific matters concluded between the various governments are also seen as being of great importance. Among such agreements, the Europol Convention is looked upon favourably, in that it enables criminal activities to be analysed in depth, making it easier to devise appropriate means of taking action against terrorism, fraud and drugs trafficking. In 1995 alone, the Europol Drugs Unit (the Europol Office's high profile division) received 1474 requests for assistance from Member States.

It is emphasized, nonetheless, that successes of this kind can only be brought about by cooperation at intergovernmental level.

Unanimous voting must therefore be retained, and the role of the European institutions must remain ancillary to that played by individual Member States.

Even now that the Europol Convention has been signed, the UK Government still has reservations about the Protocol on interpretation of the Convention by the Court of Justice.

The United Kingdom has refused to accept the Protocol because it does not consider it necessary to confer powers on the Court of Justice, given that most provisions in the Convention relate to national police units. Responsibility for their interpretation, according to the British Government, should therefore rest entirely with national courts.

III. VIEWS OF THE COMMUNITY INSTITUTIONS

1. PARLIAMENT

A. Resolution of 17 May 1995 on the functioning of the Treaty on European Union with a view to the 1996 Intergovernmental Conference — Implementation and development of the Union

'Effective action in the field of justice and home affairs

... Decisive progress should now be made in the field of justice and home affairs, which should no longer be artificially distinguished from closely-related policies within the full Community domain. Decisions on asylum policy, the crossing of the Member States' external frontiers and checks on such crossing, immigration policy and policy on non-Community nationals, and action against drug abuse must be progressively brought within the Community domain'.

'In order to facilitate the fight against serious cross-border crime, Europol should be given the operational power it needs. A more broadly based, flexible approach should be brought to bear as soon as possible as regards applying the "passerelle" procedure provided for in Article K.9 of the Treaty, extending it, in particular, to cover all the areas listed in Article K.1'.

B. The same goals are likewise set out in the resolution of 14 December 1995 on the agenda for the 1996 Intergovernmental Conference with a view to the Madrid European Council.

C. European Parliament, session documents: Report of 4 May 1995 on the functioning of the Treaty on European Union with a view to the 1996 Intergovernmental Conference

Parliament considers that it would be useful to lay down a timetable for the adoption of certain urgent measures, the category into which Europol falls. It is also proposing that European attorneys or examining magistrates be appointed specifically to deal with Europol's sphere of responsibility.

2. COUNCIL

A. Joint action of 10 March 1995 adopted by the Council on the basis of Article K.3 of the Treaty on European Union concerning the Europol Drugs Unit

'Article 2

Objectives and scope

1. Each Member State shall send one or more liaison officers to The Hague in order to constitute, with the liaison officers of the other Member States, a team which will cooperate within the Unit.

2. The Unit shall act as a non-operational team for the exchange and analysis of information and intelligence, as soon as they affect two or more Member States, in relation to:

- (a) illicit drug trafficking;
- (b) illicit trafficking in radioactive and nuclear substances;
- (c) crimes involving clandestine immigration networks;
- (d) illicit vehicle trafficking;

together with the criminal organizations involved and associated money-laundering activities.

3. The objective of the Unit is to help the police and other competent agencies within and between Member States to combat the criminal activities referred to in paragraph 2 more effectively.

For this purpose, members of the Unit, acting in accordance with their national laws, other relevant legal rules and any instructions given by their respective Member States, shall perform the following tasks:

- (a) exchange, between Member States, of information (including personal information) in furtherance of specific criminal investigations concerning the criminal activities referred to in paragraph 2;
- (b) preparation of general situation reports and analyses of criminal activities on the basis of non-personal information supplied by Member States or from other sources.'

Later sections of the document cover the following:

Article 3: Data processing
Article 4: Data protection
Article 5: Staffing
Article 6: Responsibility
Article 7: Finance
Article 8: Entry into force.

B. Madrid European Council of 15 and 16 December 1995. Presidency conclusions

Wishing as it does to create 'an area of freedom and security for Union citizens', the European Council '[requested] that ... future activities be focused on programmed priority areas, including Europol, over a number of Presidencies, particularly in relation to [terrorism and drugs and organized crime]'

As far as the latter point was concerned, the Council endorsed the report of the Group of Experts on Drugs and invited the incoming Italian Presidency to consult with

the Member States, the Commission, the Europol Drugs Unit, and the European Monitoring Centre for Drugs and Drug Addiction and thereafter to draw up a programme of activities, taking account of the guidelines in the above-mentioned report.

C. Florence European Council of 21 and 22 June 1996. Presidency conclusions

In the light of the priorities established at its previous meeting in Madrid, the European Council calls for closer cooperation between Member States in the fight against drug abuse and organized crime.

It also affirms the importance of speedily completing the study on the harmonization of Member States' laws and of giving practical effect to the proposals set out in the report of the Group of Experts on Drugs.

The European Council also makes provision for the entry into force of the Europol Convention, inviting Member States to ratify the Convention and the Protocol in the very near future. The position adopted by the Council enables the Court of Justice to give preliminary rulings on the interpretation of the Convention, despite the opposition voiced by some Member States.

3. COMMISSION

- Report on the operation of the TEU

The document surveys the results achieved as regards cooperation in the fields of justice and home affairs.

There are two kinds of problems associated with this matter:

(a) problems stemming from the legal instruments used (there is disagreement about the nature and legal force of common positions and joint action, the procedures for adopting conventions are excessively slow and complicated, and the unanimity requirement has proved to have a paralysing effect);

(b) problems stemming from the methods used (initiatives, lack of transparency, the five-tier system of organization instead of the three tiers on which Community affairs are usually dealt with, and the 'crossover' option under Article K.9, the procedure for which is unduly complicated).

- Opinion of 28 February 1996: 'Reinforcing political union and preparing for enlargement'

The Commission states that, with a view to the overriding aim of ensuring the safety of citizens within the Union, a joint approach should be pursued without, however, going outside the Community framework as was the case with the Schengen agreement (although due note is taken of the results achieved).

The Member States should start to adjust their judicial systems and administrative structures to the new need for cooperation.

The Commission also maintains that justice and home affairs should be transferred to the Community framework, 'with the exception of judicial cooperation in criminal matters and police cooperation'.

4. REFLECTION GROUP

A. Report of 1 September 1995 from the chairman of the Reflection Group on the 1996 Intergovernmental Conference

A. PREMISSES

- The Group is aware that the public are calling for greater security within the Union. Phenomena such as organized crime, drug trafficking, and terrorism therefore need to be tackled as effectively as possible.

The Group believes that there is an obvious contradiction between the nature of the above crimes, organized as they are on an international scale, and the national character of the means available to combat them.

The prospect of further enlargement, moreover, makes it even more imperative for the Union to remedy the unresolved problems.

- The Reflection Group has examined Title VI of the Treaty in the light of these initial considerations and concluded that its provisions do not go far enough to define objectives and means of action.

To cope with the difficulty it is proposing that Title VI be encompassed, at least to some extent, within the Community's sphere of activity.

B. POINTS FOR DISCUSSION

- The objectives laid down in Title VI should be defined more clearly.

- The various avenues should be explored with a view to enhancing the security of the public through Union action, seeking above all to highlight the boundary between Community responsibilities and those of individual Member States.

B. Reflection Group's report on the 1996 Intergovernmental Conference

The Reflection Group is sceptical about the feasibility of establishing a single policy on combating crime in the near future, and stresses the need for a pragmatic approach to the issue.

It thus puts forward a number of ways in which action may be taken in areas coming under the third pillar, with a view to achieving vital goals such as:

- ensuring the safety of citizens within the Union;
- the adoption of an international approach to combating crime;
- defining the objectives to be pursued under Article K.1 and, where possible, 'Communitarizing' some third pillar matters.

However, such crystal clear intentions contrast sharply with an unwillingness to cooperate which has been criticized by a number of national governments including the Netherlands Government, which, in a document entitled 'Dutch priority on the eve

of the 1996 IGC', highlights the group's inability to adopt a common approach going beyond mere declarations of principle.

When called upon to tackle the practical details of the specific issues before it, including internal security, the group has been obliged to resort to terms such as 'some of us' or 'many of us', which reflect the divisions and lack of consensus still obtaining within the Union.

IV. OTHER POINTS OF VIEW

1. DISCUSSIONS ON THE POST-MAASTRICHT PHASE, 21 June 1995

Guaranteeing internal security: cooperation in Europe moving towards the establishment of Europol, by Dr W. Bruggeman, Europol Deputy Coordinator

After Schengen and Maastricht, police cooperation has become a reality but is still incomplete. The fact is that this type of cooperation, like judicial cooperation, is not easy to organize: laws are different, as are the various police and security services. Europol is the first intergovernmental police organization in Europe. Its chief tasks are to gather information and facilitate international customs cooperation.

Until such time as an international convention between the Member States enters into force, cooperation will be regulated by the ministerial-level agreement reached by the Ministers responsible for home affairs and justice, which has applied since 30 October 1993 and constitutes the political and legal basis for Europol.

By virtue of the joint action adopted on 10 March 1995, the brief of the Europol Drugs Unit has been extended to cover trafficking in radioactive substances, illegal immigration, and trafficking in motor vehicles.

The Unit has enabled genuine cooperation to be established for the first time between police and customs officers within an international body.

In its first year of activity Europol assisted police and customs authorities in over 700 cases by paving the way for and coordinating investigations and operations at international level.

2. Europol: desired or tolerated? 18 July 1995 Dr W. Bruggeman, Europol Deputy Coordinator

The article begins by summarizing Article K.1 of the TEU and traces the roots of Europol to be found in the various Treaties.

It then explores the various problems entailed in setting up Europol: difficulties can arise either in terms of individual Member States (for example, each country ought to have its own secret service, but this is not the case) or at Community level (democratic control, funding, etc.).

It moves on to discuss the Europol Drugs Unit and describes some specific examples of police operations, which it judges to be worthwhile, in spite of the different restrictions imposed on the Unit, above all with respect to its powers.

Dr Bruggeman is, at any rate, optimistic about the future of Europol, since he can see for himself that the Member States have a real desire to cooperate. In his words, cooperation is the key and has to be the starting-point.

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