

## Agreement on Operational and Strategic Cooperation between Australia and the European Police Office (Europol) (The Hague, 20 February 2007)

### Introduction

- 5.1 The *Agreement on Operational and Strategic Cooperation between Australia and the European Police Office (Europol)* (the Hague, 20 February 2007) ('the Agreement') will provide a formal framework for the sharing of intelligence and strategic cooperation between Australia and Europol. Europol is the European Union law enforcement organisation that handles criminal intelligence.

### The Agreement

- 5.2 The Agreement will facilitate the exchange of criminal intelligence between Europol and Australian law enforcement agencies, providing significant operational benefits to Australian agencies in combating international crime.<sup>1</sup> The AFP has been designated as the national

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<sup>1</sup> National Interest Analysis (NIA), para. 9.

contact point between Europol and other competent authorities in Australia.<sup>2</sup>

5.3 Information sharing under the Agreement may include:<sup>3</sup>

- Exchange of specialist knowledge;
- General situation reports;
- Results of strategic analysis;
- Information on criminal investigation procedures;
- Information on crime prevention methods;
- Participation in training activities; and
- Providing advice and support in individual criminal investigations.

5.4 The Agreement will apply to all areas of crime within Europol's mandate.<sup>4</sup> Annex 1 of the Agreement defines certain specific forms of criminality. The Committee was informed that:

Annexure 1 is not a list of every crime type covered by the Europol Agreement. Instead, it is probably best explained as a list of definitions of some of the crime types covered by the Europol Agreement.<sup>5</sup>

5.5 The exchange of information between Australia and Europol will only take place for the purpose of and in accordance with the provisions of this Agreement.<sup>6</sup>

5.6 Article 8 of the Agreement provides for the supply of information by Australia to Europol and Article 9 of the Agreement provides for the supply of personal data by Europol to Australia. The Committee received a submission from Dr Ben Saul who noted that 'where personal data is supplied by Europol to Australia, a more comprehensive range of safeguards applies (Article 9) than when Australia supplies information to Europol (Article 8)'.<sup>7</sup>

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2 Article 5 of the Agreement. See Article 6 'Competent Authorities'.

3 Article 4 of the Agreement.

4 Article 3(1) of the Agreement.

5 Australian Federal Police, *Submission 3*.

6 Article 7(1) of the Agreement.

7 Dr Ben Saul, *Submission 5.1*.

- 5.7 The AFP explained that the different safeguards were a result of Australia's and Europol's domestic regimes:

Europol specifically required that comprehensive data protection obligations be included in Article 9 of the Europol Agreement because Australia is not a Member State of the European Union and is not subject to the privacy regime that applies to European Union Member States under the European legal framework. The relevant Council of the European Union Acts require that data protection safeguards be included in cooperation agreements that Europol concludes with non-European member states. Article 9 reflects that requirement.

Australia did not require a similar undertaking from Europol because the European Police Office (Europol) and the Member States of the European Union are subject to the European data protection regime. Australia was satisfied that Europol is operating under strict obligations in relation to data protection and did not consider it necessary to include any further safeguards in the Europol Agreement.<sup>8</sup>

- 5.8 Article 14 of the Agreement provides for AFP officers to be assigned as liaison officers to Europol. The Committee was informed by representatives from the AFP that an officer started at Europol in April to facilitate the exchange of information between Australia and Europol.<sup>9</sup>

- 5.9 Under Article 7(3) of the Agreement, a written request is required.<sup>10</sup> The Committee was informed that:

One of the reasons that we have placed an officer at Europol headquarters is that he will have access to the online AFP case management system. Therefore, once the requests are received in Canberra from any jurisdiction in Australia they can be transmitted electronically to that officer who can then print them off and make a formal request in writing to Europol. Similarly, we expect that Europol will receive written requests from their member states and then come to

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8 Australian Federal Police, *Supplementary Submission 3.1*.

9 Federal Agent Tim Morris, *Transcript of Evidence*, 22 June 2007, p. 35.

10 A request can be made orally with written confirmation to follow if required by the requested party: Article 7(3) of the Agreement.

our officer in Europol in the Hague who, to save time, will transmit them electronically back to Australia where they can be actioned.<sup>11</sup>

## Implementation

- 5.10 The Committee was informed that the AFP is currently implementing structures which will assist in the facilitation of intelligence received under the Agreement through the AFP:

We are currently building those structures. We have an implementation team in Canberra. We are finalising arrangements with the states and the Crime Commission about what databases will be used to store the information so that we are consistent with the privacy principles required by Europol and the European Union. We are trying to work out the best way to leverage the substantial amount of information and expertise that they have into the Australian law enforcement community. Similarly, we have to make available to Europol the extensive holdings of Australian law enforcement in a coordinated way so that they can get the most use from them. We are still working through the issues to find the optimum way.<sup>12</sup>

## Costs

- 5.11 The costs associated with the assignment of a liaison officer to Europol are estimated to be approximately \$500,000 per annum and are being met from within the current AFP budget allocations.

That cost includes the salary and allowances for the officer and the cost of accommodation and air fares and the normal entitlements that overseas government officials are entitled to such as reunion airfares and the like. It also includes the cost of setting up the office and maintaining the computer systems

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11 Federal Agent Tim Morris, *Transcript of Evidence*, 22 June 2007, p. 38.

12 Federal Agent Tim Morris, *Transcript of Evidence*, 22 June 2007, p. 36.

at the office, and so on. That is the approximate cost that we have per officer in Europe.<sup>13</sup>

## Consultation

- 5.12 The Minister for Justice and Customs and the AFP Commissioner consulted with State and Territory Police Ministers and police services about the proposed Agreement, and in particular, whether State and Territory police forces wanted to be listed as ‘competent authorities’ for the purposes of the Agreement.<sup>14</sup> Each jurisdiction advised it wished to be designated as a competent authority and that it was in a position to meet the obligations under the Agreement.<sup>15</sup>
- 5.13 The Agreement was listed on the schedule to the Commonwealth-State/Territory Standing Committee on Treaties (SCOT) since February 2005.<sup>16</sup>

## Recommendation

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### Recommendation 5

**The Committee supports the *Agreement on Operational and Strategic Cooperation between Australia and the European Police Office (The Hague, 20 February 2007)* and recommends binding treaty action be taken.**

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13 Federal Agent Tim Morris, *Transcript of Evidence*, 22 June 2007, p. 38.

14 NIA, Consultation Annex, para. 1.

15 NIA, Consultation Annex, para. 1.

16 NIA, Consultation Annex, para. 2.

