

Summary of the statement by the Committee on Justice, 2010/11:JuU21

In the opinion of the Committee, parliamentary scrutiny is important in order to ensure that a balance between measures intended to protect citizens and measures intended to protect the privacy of the individual is maintained. This applies to both Europol and Eurojust. The Committee considers that the Commission should draw up a joint schedule and a joint procedure for parliamentary scrutiny of Europol and Eurojust.

The Committee considers it positive that the Commission shares the national parliaments' conviction that it is important that the national parliaments are involved at an early stage of the process in discussing various forms of cooperation for parliamentary scrutiny. As regards the forms for parliamentary scrutiny, the Committee on Justice considers that these should be simple, rapid and concrete and that no new authorities need be established for this purpose.

The scrutiny should focus primarily on following up results and strategies, rather than on monitoring individual decisions. It is therefore necessary that representatives from all the national parliamentary committees (with responsibility for policing issues), as well as representatives from the corresponding committees in the European Parliament, participate in parliamentary scrutiny on the same terms. The Committee on Justice supports the Commission's proposal to establish a joint interparliamentary forum. In the opinion of the Committee it is, however, important to continue at the same time to prepare a regulation in accordance with Article 88 of the Treaty on the Functioning of the European Union.

There is one explanatory reservation on the matter (Sweden Democrats).

Account of the matter

The matter and its preparation

In accordance with Ch.10, Art.5 of the Riksdag Act, the Chamber has referred the 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 (COM (2010) 776) to the Committee on Justice for examination and a statement.

The matter of scrutiny by the national parliaments of Europol was dealt with in the conclusions from the EU Speakers' Conference in Stockholm on 14-15 May 2010.

COSAC (the Conference of Parliamentary Committees for Union Affairs) has also discussed the matter of parliamentary scrutiny of Europol on several occasions, including 24-26 October 2010.

Through its Secretariat, the Committee on Justice was represented at an interparliamentary committee meeting on 4-5 October 2010 in the European Parliament's Committee on Civil Liberties, Justice and Home Affairs (LIBE). Parliamentary evaluation of Europol was one of the issues on the agenda at this meeting. The Committee on Justice was further represented at an informal consultation meeting in the Commission, DG Home, on 24 January 2011. At this meeting, the Communication from the Commission was discussed as well as the forthcoming review of Europol's legal basis.

Background

Europol is the EU's common police agency. Europol's aim is to help the EU member states cooperate more closely and effectively in preventing and combating serious international crime. Europol serves to support crime prevention authorities in the EU member states and collects, analyses and exchanges information in matters concerning two or more member states.

On 6 April 2009 a Council decision was taken on the establishment of the European Police Office (20097371/JHA). The Council decision, which came into force on 1 January 2010, and is Europol's new legal basis, replaced the Europol Convention and its additional protocols. The aim of the Council decision was primarily to replace the legal basis for Europol with an instrument that is more flexible than an international agreement. With the Council decision, funding from the member states was also replaced by a contribution from the EU's general budget, which means that Europol now has the status of an EU agency.

Article 88 of the Treaty on the Functioning of the European Union prescribes a new legal order for Europol. According to this article, regulations adopted in accordance with the ordinary legislative procedure shall determine Europol's activities etc. The regulations shall also lay down the procedures for scrutiny of Europol's activities by the European Parliament, together with national parliaments. Similarly, under Article 85 of the same Treaty, Eurojust shall be regulated by regulations which, inter alia, shall determine arrangements for involving the European Parliament and national parliaments in the evaluation of Eurojust's activities.

In the Stockholm Programme (EUT C 115, 4.3.2010, p.1), the European Council urges the Commission to present a basis for discussion on these procedures.

The main contents of the document

According to the Communication, Europol's future legal framework is the subject of an ongoing reflection, led by the Commission, involving all key institutions and stakeholders (in particular the European Parliament and Council representatives). In the course of this reflection, the institutions will be invited to make concrete proposals as to how mechanisms of parliamentary scrutiny can be put in place and efficiently implemented in practice in line with Article 88 of the Treaty on the Functioning of the European Union.

In the Communication, the Commission presents an overview of the opinions put forward in the past decade as regards parliamentary scrutiny of Europol. The Commission further gives an account of the current procedures for scrutiny of Europol's activities, draws certain conclusions and issues recommendations with the aim of providing a basis for future discussions.

The current framework for parliamentary scrutiny

In the Communication the Commission gives an account of the new powers given to the European Parliament with the Council decision establishing Europol. By incorporating Europol within the EU legal framework, the European Parliament is now directly involved in steering Europol's activities. Further, the European Parliament has responsibility for control of Europol's budget and shall, following a recommendation from the Council, give discharge to Europol's Director regarding budget implementation. According to a provision in the Council decision, the Presidency of the Council, the Chairperson of the Management Board and the Director are to appear before the European Parliament, at its request, in order to discuss matters relating to Europol. Furthermore there are rules on information from Europol's Management Board and the joint supervisory body to the European Parliament.

As regards the national parliaments' supervision of Europol's activities, the Commission states that this is exercised through their control over their respective governments, in accordance with the constitutional rules of each member state. Furthermore Europol's Management Board, composed of one representative from each member state, reports to the Council, whose ministers are subject to national parliamentary controls. The Commission notes that the procedures for parliamentary scrutiny vary. In some member states, for example, the control exercised is confined to a document-based scrutiny of Europol when they discuss acts, while other parliaments use their right to hold their governments to account in EU matters as a means of obtaining information about Europol at any given moment.

There are parliaments that discuss Europol matters if the point is on the agenda of the Council meeting, and in some member states, the national parliament's approval is required for the Government to agree to measures in the area of Justice and Home Affairs.

The debate on parliamentary scrutiny of Europol

In its Communication the Commission gives an account of various points of view and proposals from the European Parliament as regards scrutiny of Europol. The European Parliament has, for example, proposed that Europol should inform the European Parliament on a quarterly basis of Europol's activities, that the procedures for parliamentary scrutiny by the European Parliament and the

national parliaments be strengthened and that greater transparency be created through better provision of information from Europol.

The Commission also presents points of view put forward by the national parliaments within the framework of COSAC. According to the Communication, COSAC has especially highlighted the need for a concerted parliamentary oversight of Europol by the European Parliament and national parliaments. In 2009, in preparation for the 41st conference, the COSAC Secretariat also compiled a report based on the responses to a questionnaire sent out to all national parliaments in the EU. The national parliaments have, for example, proposed that parliamentary cooperation for scrutiny of Europol be exercised by means of existing joint parliamentary meetings, by establishing a specific joint committee composed of members of national parliaments and the European Parliament, or by enhancing the role of the existing COSAC.

Conclusions and recommendations

In its Communication, the Commission states that scrutiny by the European Parliament and the national parliaments is necessary in order to strengthen democratic legitimacy in the field of cross-border police cooperation in the EU. The Commission states that there are many who perceive existing controls through the national parliaments, the national data supervisory bodies, Europol's Joint Supervisory Body and Management Board as being exercised in a manner which is indirect, fragmented and not easy to understand. According to the Commission, the national parliaments consider the supervision process via the control of their governmental representative on the Board or in the Council to be cumbersome and that it is difficult to coordinate their efforts among each other.

The Commission further states that the European Parliament, in the absence of an incisive legislative role in the field of police cooperation, has for some time wished to exercise a closer and deeper scrutiny of Europol's activities.

The Commission proposes in the Communication that a joint, permanent, interparliamentary forum be established, comprising the national parliaments' and European Parliament's committees responsible for police matters. The institutional framework of the Lisbon Treaty supports the establishment of such a forum. The establishment of a joint, permanent, interparliamentary forum would provide a formal mechanism for information exchange and coordination between national parliaments and the European Parliament with a view to unifying parliamentary scrutiny of Europol at the EU level.

The Commission further proposes that a new strategy for communication between the European Parliament and the national parliaments be introduced with the aim of increasing transparency. In the opinion of the Commission, it would be useful to hold a debate in the European Parliament's Committee on Civil Liberties, Justice and Home Affairs (LIBE) on Europol's multi-year strategy and on its annual work programme. The Commission also considers that Europol should send an update of its operational achievements and the result of the user survey that is conducted every other year to the European Parliament and the national parliaments. Finally, the Commission states that with a view to future regulation, it is important to ensure adequate separation between legislative and executive powers. It does not, therefore, recommend that the European Parliament designate members to Europol's Management Board. Further, the Commission considers that Europol's

Director should be appointed by Europol's Management Board rather than by the Council or the European Parliament, in order to avoid turning this into a political process.

The Committee's examination

Conference of Speakers of EU Parliaments

In the conclusions from the Conference of the Speakers of the EU Parliaments in Stockholm on 14-15 May 2010, the Speakers declared their agreement to COSAC's request that the EU institutions should conduct a dialogue with the national parliaments when they put forward and negotiate a new regulation for parliamentary supervision of Europol.

The Speakers stated further that the national parliaments should be given a reasonable amount of time to put forward their views, and the welcomed consultation documents from the Commission in this area. The Speakers further considered that interparliamentary meetings in a suitable form, which would guarantee satisfactory representation, preferably of the parliamentary committees responsible for these issues, should be arranged in connection with the control mechanism as part of the consultation process concerning a new regulation of Europol. The Speakers asked the incoming President of the Conference of Speakers to contribute to the preparations for such a meeting. They further asked the incoming Presidency to look into whether recurring conferences for parliamentary committees can be scheduled, for example within the framework of justice and home affairs in cooperation with the European Parliament.

COSAC

The conclusions of COSAC on 24-26 October 2010 indicate that COSAC, in the light of the coming consultation documents and legislative proposals on matters including Europol, wishes to emphasise how important it is that the Commission consults the national parliaments on a broad basis at an early stage. COSAC also urged the Commission to submit proposals on legislation regarding Europol and Eurojust at the same time.

Conferences and meetings in the European Parliament and Commission

On 4–5 October the Committee on Civil Liberties, Justice and Home Affairs of the European Parliament (LIBE) arranged an interparliamentary committee meeting entitled Democratic Accountability in the Area of Freedom, Security and Justice – Evaluating Europol, Eurojust, Frontex and Schengen. The programme stated that the meeting was taking place in the framework of a process launched by the Conference of the Speakers of the EU Parliaments (EUSC) in Stockholm in May 2010. The Committee on Justice was represented at this meeting by the Secretariat.

On 24 January 2011, an informal consultation meeting was held in the Commission at the Directorate-General for Home Affairs (DG Home). At the consultation meeting at which the Committee on Justice was represented, the Commission's Communication and the forthcoming review of the legal basis for Europol were discussed.

The views of the Committee on Justice

Article 12 of the Treaty on European Union states that the national parliaments should actively contribute to the smooth functioning of the Union in ways that include participating in the political monitoring of Europol and the evaluation of Eurojust's activities in accordance with Articles 88 and

85 of the Treaty on the Functioning of the European Union. As the Commission writes in its communication, the Committee on Justice considers it important that there is parliamentary monitoring of activities that are directed towards combating crime. This applies to both Europol and Eurojust. Monitoring of this kind is particularly important because this type of activity often impinges on the fundamental rights and freedoms of citizens, for example the protection of personal privacy. In the Committee's opinion, it is important that there is parliamentary scrutiny to ensure that a balance between measures intended to protect citizens and measures intended to protect the rights of the individual is maintained.

The Committee considers that the Commission should draw up a joint schedule and a joint procedure for parliamentary scrutiny of Europol and Eurojust.

The Committee on Justice considers it satisfying that the Commission shares the national parliaments' conviction that it is important for the national parliaments both to be involved at an early stage in the process of discussing different forms of cooperation for parliamentary scrutiny (for which there is already a legal basis) and being involved in the process of drafting a new legal regulation in accordance with Article 88 of the Treaty on the Functioning of the European Union.

As regards the forms for parliamentary scrutiny, the Committee on Justice considers that these should be simple, rapid and concrete and that no new authorities need be established for this purpose. It should focus primarily on following up results and strategies, rather than on scrutinising individual decisions.

The Committee on Justice supports the Commission's proposal to establish an interparliamentary forum for this purpose. However, it is important that each and every one of the national parliaments (via representatives from the parliamentary committees responsible for policing issues) and the European Parliament (via representatives from the corresponding committees there) participate on the same terms and that the forum can be used jointly by all parliaments. A forum of this kind would, in the opinion of the Committee, also be an excellent arena for the exchange of information and discussions proposed by the Commission on Europol's multi-year strategy and its activity plan. Such a forum may already be established today with the support of the EU's institutional framework, according to the Lisbon Treaty. In the opinion of the Committee on Justice, it is, however, important at the same time to continue to prepare a regulation in accordance with Article 88 of the Treaty on the Functioning of the European Union.

In conclusion, the Committee agrees with what the Commission has expressed regarding how important it is in a future regulation to ensure adequate separation between legislative and executive powers, and for this reason it is not appropriate that the European Parliament appoint members to Europol's Management Board. Further, the Committee considers that, in order to avoid turning the nomination into a political process, Europol's executive Director should be appointed by its Management Board rather than by the Council or the European Parliament.

Reservation

The Committee's proposal for a decision by the Riksdag and positions resulted in the following reservation. The heading indicates which item in the Committee's proposal for a decision by the Riksdag that is referred to in that particular section.

Scrutiny of Europol's activities – grounds for the reservation (Sweden Democrats)

Kent Ekeröth (Sweden Democrats).

Position

First, I consider the continual extension of Europol's competence worrying. I do, however, welcome the debate on the democratic scrutiny of Europol. At the present point in time there is no reason to abandon the existing model of parliamentary control. Neither is there any reason, beyond the examination already carried out today, to extend the Riksdag's scrutiny to an area that comes under the Government's sphere of responsibility. This would mean deviating from our long-established parliamentary traditions in Sweden. I do not think that members of the Riksdag should be part of a permanent parliamentary forum. In particular, not when it concerns the establishment of a special sub-organisation for maintaining close contact with Europol. In my opinion, this is not the right way of dealing with the democratic deficit. The only thing it will achieve is the establishment of yet another body of no real use. As regards the increased transparency that more information from Europol will hopefully achieve, I have no objections to the proposal. There may be benefits when a policy agency whose activities affect crime prevention in Sweden also publishes analyses of its annual operations. What I do wonder, however, is whether the information should perhaps be sent to the Government Offices first for initial consideration.