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on the establishment of the European Police Office (Europol)

Committee on Civil Liberties, Justice and Home Affairs

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1. Europol: current legal context

The establishment of the European Police Office (Europol) followed on from an ambitious idea put forward by Germany in 1989 to set up a police office with wide-ranging powers. Europol was established on the basis of Article K1.9 of the Maastricht Treaty. The Office began its activities on 3 January 1994 and was initially known under the name 'Europol Drugs Unit' (EDU). Its action was limited to combating drug trafficking. Gradually its work was extended to cover other major areas of crime. Europol was set up by the Europol Convention¹, which was signed on 26 July 1995, and the Office officially started its activities on 1 July 1999. It was based in The Hague, Netherlands. The objective of Europol, which has legal personality², is to improve the effectiveness and cooperation of the competent authorities in the Member States in preventing and combating serious forms of organised international crime and terrorism.

The Treaty of Amsterdam (Article 30(2)) gave it a key role in exchanges of information between police forces. Five years after the Treaty of Amsterdam, it was considered necessary to enable Europol to facilitate and support the investigation activities of the competent authorities and to support the coordination of operational activities conducted by joint teams in which Europol representatives would play a back-up role³. In the consolidated version of the Treaty on European Union (TEU)⁴, the provisions of the role of Europol come under the section on police and judicial cooperation in criminal matters.

From the outset, Europol's role has related to information, support and analysis. Subsequently, changes have had to be made to the Europol Convention, leading to the establishment of three additional protocols⁵. Ratification of these protocols by the EU Member States has only been completed in recent months and the protocols will enter into force in April 2007 at the latest⁶. The procedure for revision of the Convention through protocols requires ratification by all the Member States and is therefore particularly long and cumbersome. Each amendment of the Europol Convention requires a minimum of four years.

2. Position of the European Parliament on Europol: its demands since 1998

The European Parliament considers the establishment of Europol to be necessary as a means of combating organised crime in the EU and has always supported any measures to improve this body. However, it has also repeatedly stressed that, in a state governed by the rule of law, police activities should be subject to parliamentary scrutiny, whereas the Europol Convention only provides for forwarding of an annual activities report. The European Parliament has always campaigned for Europol's incorporation into the EU institutional framework. It has

¹ 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), OJ C 316, 27.11.1995, p. 2.

² Article 26(1) *ibid.*

³ Framework Decision 2002/465/JHA of 13 June 2002 on joint investigation teams, OJ L 162, 20.6.2002, p. 1.

⁴ OJ C 325, 24.12.2002, p. 1.

⁵ The Europol Protocols: the Protocol amending Article 2 and the annex to the Europol Convention of November 2000, OJ C 358, 15.12.2000, p. 1; the Protocol on the privileges and immunities of Europol, the members of its organs, the deputy directors and the employees of Europol of 28 November 2002, OJ C 312, 16.12.2002, p. 1.; and the Protocol amending the Europol Convention of 27 November 2003, OJ C 2, 6.1.2004, p. 3.

⁶ OJ L 41, 13.2.2007, p. 21.

also, on this basis, called for Europol to be subject to democratic scrutiny by Parliament⁷, judicial control by the Court of Justice and financial and budgetary control under the customary EU arrangements on the matter. It has been suggested in several European Parliament resolutions that Europol should be placed on a Community footing⁸.

The European Parliament has often criticised the cumbersome nature of procedures for the amendment of the Europol Convention, which require ratification by the Member States and cause delays in the entry into force of new provisions. It has on several occasions called for Council decisions to be taken pursuant to Article 34(2) of the EU Treaty⁹. The rapporteur therefore warmly welcomed the Commission proposal of 20 December 2006 on the Council Decision establishing the European Police Office aimed at providing Europol with a legal framework more adaptable to changing circumstances. However, the rapporteur considers that essential alterations are required in order to ensure effective democratic scrutiny over this restructured organisation. A more detailed reference to this is contained in the following paragraph.

3. New scenario for Europol

The need for a new legal basis for Europol has often given rise to proposals and initiatives, in particular through the European Parliament. In 2002, for instance, a study was launched - on the occasion of the agreement on the three protocols amending the Europol Convention - on the possibility of replacing this convention with another legal instrument. A wide-ranging consultation procedure was organised by the Austrian Presidency of the Council and an options paper, setting out possible ways of improving the functioning of Europol was drawn up by the 'Friends of the Presidency' group in May 2006¹⁰.

In its conclusions, the June 2006 JHA Council (conclusions on the future of Europol) decided 'to consider whether and how to replace by 1 January 2000 in date, or as soon as possible thereafter, the Europol Convention by a Council Decision as foreseen in Article 34(2)(c) TEU, where possible on the basis of a concrete initiative or proposal.'

Initial assessment of the contents of the Commission proposal

The proposal submitted by the Commission in December 2006¹¹ aims at establishing Europol on the basis of a Council Decision, including all the amendments already incorporated in the three Protocols, as well as further improvements to address the new challenges faced by Europol and to increase the effectiveness of its support for the law enforcement authorities of the Member States. Article 34(2)(c) of the TEU is the legal basis for this Council Decision. Article 34 of the TEU stipulates that Council decisions cannot entail direct effect. Member States should decide whether additional implementing laws are necessary to give effect to the

⁷ See European Parliament recommendation to the Council on Europol: Reinforcing parliamentary controls and extending powers (OJ C 219, 30.7.1999, p. 101).

⁸ See the EP recommendation of 30 May 2002 on the future development of Europol and its automatic incorporation into the institutional system of the European Union (OJ C 187 E, 7.8.2003, p. 144) and the EP recommendation of 10 April 2003 on the future development of Europol (OJ C 64 E, 12.3.2004, p. 588).

⁹ See recital E of the EP recommendation of 30 May 2002 on the future development of Europol and its automatic incorporation into the institutional system of the European Union (OJ C 187 E, 7.8.2003, p. 144).

¹⁰ Friends of the Presidency's report to the Future of Europol, CS_2006_09184 Options Paper AT.

¹¹ Council decision establishing the European Police Office (Europol), COM(2006)0817.

Council decision. In future, amendments to such decisions should allow some time for Member States to amend their national laws (in this connection, see Council decision on Eurojust¹²). Article 34 of the TEU stipulates that decisions implementing Council decisions must be adopted by qualified majority within the Council. Article 35 of the TEU lays down rules on the jurisdiction of the Court of Justice which apply automatically to all Council decisions adopted on the basis of Article 34 of the TEU and therefore also to the Europol Convention if it is replaced by a Council Decision¹³.

This Council Decision will give Europol the status of an agency of the European Union¹⁴. This will have two extremely important consequences: Europol will be funded by the Community budget¹⁵ and the Staff Regulations of the European Communities will apply to Europol staff¹⁶. The fact that the Office's intervention is not subject to the existence of an organised criminal structure¹⁷ and the extension of Europol's mandate¹⁸ will add effectiveness to Europol's activities. The current proposal for a Council Decision also contains provisions on joint investigation teams, the initiating of criminal investigations and money-laundering¹⁹. The incorporation of the provision on access to Europol documents in compliance with Regulation (EC) No 1049/2001 of the European Parliament and the Council²⁰ is also an extremely positive aspect. As regards data protection, it is to be welcomed that the current Decision also provides for the appointment of an independent Europol data protection officer²¹. This can only increase the confidence of the authorities of Member States in Europol. Finally, the principles of subsidiarity (Article 2 of the TEU and Article 5 of the TEC) and proportionality have also been respected in the drafting of this decision²².

As regards the European Parliament's role²³, Article 39 of the TEU will apply. It provides that the European Parliament must be consulted on any measures implementing a Council Decision if they are to be adopted by the Council. This rule should also apply to Europol Council Decisions. The European Parliament's involvement in the decision-making procedure for the establishment of the Europol budget will help strengthen democratic scrutiny over this organisation. However, parliamentary scrutiny over Europol raises two questions which are not addressed in the new Decision:

- scrutiny by national parliaments and the European Parliament over the adoption of a Council Decision and future amendments thereto should not be less stringent than over amendments to the Convention (a protocol requiring ratification). Member States should discuss how their national parliaments can be involved in the adoption of any amendments to the Europol Council Decision.

¹² OJ L 63 of 6.3.2002.

¹³ Recital 22, Council Decision (Europol), COM(2006)0817.

¹⁴ Recital 5, *ibid*.

¹⁵ Recital 3 and Article 41, *ibid*. The Community budget will replace the direct contributions of Member States. The corresponding amounts have already been allocated under the 2007-2013 financial framework: EUR: 82 million for 2010 and up to EUR 85 million in 2013, COM_SEC(2006)1683, p. 5.

¹⁶ Article 38, Council decision (Europol), COM(2006)0817.

¹⁷ Compare Article 2(1) of the Europol Convention OJ C 316 of 27.11.1995, with Articles 3-4 of the Council Decision (Europol), COM(2006) 817.

¹⁸ Annex I, Council Decision (Europol), COM(2006) 0817.

¹⁹ Article 6-7 and recital 9 respectively of the Council Decision (Europol), COM(2006)0817.

²⁰ OJ L 145, 31.5.2001, p. 43. See Article 45 of the Council Decision (Europol), COM(2006)0817.

²¹ Article 27, Council Decision (Europol), COM(2006)0817.

²² Recital 24, *ibid*.

²³ Recital 21, *ibid*.

- the setting up of a joint national parliaments/European Parliament committee²⁴ to control the activities of Europol could be an appropriate initiative.

In the current decision, the only reference to parliamentary scrutiny , with the exception of the budget, is in Article 47, which mentions the possibility of the Chairman of the Management Board and the Director of Europol appearing before the European Parliament to discuss general questions relating to Europol. The European Parliament will only be consulted in the event of dismissal of the Director and Deputy Directors of Europol by the Council²⁵.

Conclusion

The European Union still believes in the principle of sovereignty and in strong partnerships, backed up by new organisations and initiatives. Belief in and support for the future of Europol is still strong, especially now that steps are finally being taken to renew the organisation in legal and operational terms. However, improvements are needed as regards Europol's democratic responsibility, especially following the extension of its operational powers. The granting of appropriate operational powers and the improvement of democratic control are intrinsically linked.

²⁴ See A5-0108/2004 (5438/2004 – C5-0059/2004 – 2004/0806(CNS)).

²⁵ Article 37(7) of the Council Decision (Europol), COM(2006)0817.