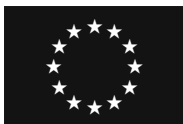


EUROPEAN PARLIAMENT

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Committee on Civil Liberties, Justice and Home Affairs

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DRAFT REPORT

on the initiative by the Republic of Austria with a view to the adoption of a
Council Act amending Europol's Staff Regulations
(5428/2006 – C6-0073/2006 – 2006/0804(CNS))

Committee on Civil Liberties, Justice and Home Affairs

Rapporteur: Claude Moraes

Symbols for procedures

- * Consultation procedure
majority of the votes cast
- **I Cooperation procedure (first reading)
majority of the votes cast
- **II Cooperation procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- *** Assent procedure
*majority of Parliament's component Members except in cases
covered by Articles 105, 107, 161 and 300 of the EC Treaty and
Article 7 of the EU Treaty*
- ***I Codecision procedure (first reading)
majority of the votes cast
- ***II Codecision procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- ***III Codecision procedure (third reading)
majority of the votes cast, to approve the joint text

(The type of procedure depends on the legal basis proposed by the Commission.)

Amendments to a legislative text

In amendments by Parliament, amended text is highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). These suggested corrections are subject to the agreement of the departments concerned.

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the initiative by the Republic of Austria with a view to the adoption of a Council Act amending Europol's Staff Regulations (5428/2006 – C6-0073/2006 – 2006/0804(CNS))

(Consultation procedure)

The European Parliament,

- having regard to the initiative by the Republic of Austria (5428/2006)¹,
 - having regard to Article 44 of the Council Act of 3 December 1998 laying down the staff regulations applicable to Europol employees (hereinafter referred to as the 'staff regulations'),
 - having regard to Article 39(1) of the EU Treaty, pursuant to which the Council consulted Parliament (C6-0073/2006),
 - having regard to the Commission Communication to the European Parliament and the Council - Democratic Control over Europol (COM(2002)0095),
 - having regard to its recommendation to the Council of 30 May 2002 on the future development of Europol and its automatic incorporation into the institutional system of the European Union²,
 - having regard to its recommendation to the Council of 10 April 2003 on the future development of Europol³,
 - having regard to its resolution of 7 July 2005 on the initiative by the Grand Duchy of Luxembourg with a view to adopting a Council decision adjusting the basic salaries and allowances applicable to Europol staff⁴,
 - having regard to Rules 93 and 51 of its Rules of Procedure,
 - having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs (A6-0000/2006),
- A. whereas Parliament has not been consulted on, or informed of, any of the operational and organisational measures concerning Europol, or Europol's current activities and future programmes in response to the needs of the EU and the Member States; whereas this lack of information makes it impossible for Parliament to assess the relevance and adequacy of the proposed decision;

1. Rejects the initiative by the Republic of Austria;

¹ Not yet published in OJ.

² OJ C 187 E, 7.8.2003, p. 144.

³ OJ C 64 E, 12.3.2004, p. 588.

⁴ *Texts Adopted*, P6_TA(2005)0290.

2. Calls on the Republic of Austria to withdraw its initiative;
3. Instructs its President to forward its position to the Council and Commission, and the government of the Republic of Austria.

EXPLANATORY STATEMENT

The European Parliament has been consulted on the initiative presented by the Republic of Austria with a view to adopting a Council Act amending Europol's Staff Regulations.

The Austrian proposal aims at modifying the rules concerning the terms of contract for all employees. Moreover the proposal, to be adopted by the Council acting unanimously, intends to update the staff regulation and in particular the employment relationship of the Financial controller's office and of the Management Board Secretariat.

The European Parliament is aware of the importance of Europol as a very important piece of the architectural security in the EU. Progress has been made as far as cooperation and exchange of information on criminal analysis and organised crime are concerned. Your rapporteur believes that in order to further cooperation on security issues in the EU, common standards have to be used within the member states and this can only be achieved if Europol becomes a fully fledged EU Agency. The development of Europol is on the agenda of the European Commission¹ which might put forward a proposal for the transformation of this intergovernmental organisation in an EU body in the second half of 2006. The reorganisation of Europol seems to be also one of the top priorities in the EU justice and interior ministers meetings. Options for reform are being prepared by the working group in the Council and they will be presented in the EU justice and interior ministers meeting on the 1 June 2006² at the latest. Europol's mandate has to be revised to make it more effectively operational and in order to improve cross-border police cooperation.

It is, of course, of great importance for the stability of the organisation to improve and update its staff regulations as this would help to create a better working environment. However, your rapporteur believes that this proposal needs to be assessed in the more general context of the latest developments concerning Europol. This body, as mentioned above, is currently in the status of being reformed, and for good reasons.

The European Parliament has insisted several times on the requisite of democratic control, data protection, transparency (access to documents) and accountability of Europol. So far these elements have not yet been addressed by the Council. The general reform of Europol will be very much supported by your rapporteur as far as it is going to address the above mentioned elements. However, for the time being, it does not seem consistent with our requests to draft an opinion on the initiative on which the Parliament is being consulted here.

More transparency is needed in order to enhance Europol in its role as the EU's police cooperation office. Any future proposals on the future of Europol need to address the points developed below and only on that occasion can the European Parliament provide its opinion. Some elements are crucial for the Parliament and they can be used as good material for reflection:

1. The Europol convention's amending protocols:

¹ Council and Commission Action Plan implementing the Hague programme on strengthening freedom, security and justice in the European Union, Brussels 10 June 2005, 9778/2/05 REV 2 JAI 207, p. 18.

² Future of Europol, Option paper, reflecting the outcome of the discussion on the Future of Europol held during the Austrian Presidency, May 2006.

It is important to note that the original Europol convention signed on the 26 July 1995 has been amended by three protocols¹, which until now have not been ratified by all Member States and consequently could not enter into force. These protocols intend to enhance Europol's role as the central European law enforcement organisation. They addressed obstacles identified by Member States in their daily cooperation with Europol and the cooperation between Europol and Third partners². It is therefore surprising that Member States - which have shown their political determination for a change during negotiations and during the adoption of the protocol by the Council - are now unwilling to proceed with the internal ratification process. Furthermore, when adopting the EU Constitutional Treaty, the Member States set a clear signal towards an extended role for Europol in the future, but at present they seem reluctant to take the necessary action to implement the changes they have already decided upon. Despite the European Council's request to Member States as regards the ratification of all protocols by end of 2004, no progress has been made until now³. The ratification of the three protocols seems to be a very important priority as it has been underlined by the Austrian Presidency in the High level conference on the Future of Europol because "otherwise a gap between political will and practise of implementation will be identified". It would be probably the right time now to replace the European Convention by a Council decision⁴.

2. Access to Europol's documents

The architecture of Europol dates back to the early 1990s and it can be considered as the oldest product of EU law enforcement cooperation. For some years now problems have been encountered above all regarding access to its documents, namely the principle of availability. Mutual exchange of information is already under the task of the Europol⁵. However, it is unfortunate that in the Europol Convention, the duty to supply data from the Member States to Europol is only a moral one. It would be more effective if it was legally binding⁶. This requirement could be met if Europol becomes a European Agency since in that case European common standards could be implemented.

In order to be accountable, Europol activity should be scrutinised by the European Parliament. The Parliament has often requested for the Europol annual activities report and for the data protection report to be drafted by the joint supervisory body responsible for data protection, but these demands have not been met till now⁷. The protocol¹ dealt with some of these issues

¹ According to the Europol Convention (Art. 43 of the Europol Convention) have to be ratified by Member States in accordance with their respective constitutional requirements.

² The second protocol (Council Decision of 28 November 2002), for example, assigns Europol competences to participate in Joint Investigative Teams of the Member States and underlines and reinforces its role as a central coordination body for Member States' investigations. The third protocol ("Danish protocol", Council Decision of 27 November 2003) streamlines, among others, internal procedures which delayed Europol's work in the past and at present, gives Europol the possibility to set up new data bases in order to facilitate its analysis work, facilitates the participation of Third partners in Europol's analytical work and extends the rights of the European Parliament.

³ Fight against terrorism and organised crime; police cooperation in Europe: the role of Europol, contribution of Mr. Jens Henrik Højbjerg, Europol Deputy Director to the joint parliamentary meeting of 18 October 2005, p.2

⁴ Chairman's Summary of the High level Conference on the Future of Europol (23-24 February 2006), Europol 20 CATS 63, Brussels 29 March 2006, 7868/06, p. 3.

⁵ Europol Convention, Council Act 26 July 1995, Title II.

⁶ Chairman's Summary of the High level Conference on the Future of Europol (23-24 February 2006), Europol 20 CATS 63, Brussels 29 March 2006, 7868/06, pp.6-7

⁷ Moraes Report on the initiative by the grand duchy of Luxembourg with a view to adopting a Council decision adjusting the basic salaries and allowance applicable to Europol Staff (5429/2005-CC6-0037/2005-2005/0803

such as providing for the right of access to Europol documents², informing the European Parliament according to the consultation procedure and the possibility for the Presidency or its representative and the Director of Europol to appear before the European Parliament in order to discuss general questions related to Europol³. Despite some elements of transparency inserted in the Protocol, although not yet ratified, it is clear that the current impossibility for the European Parliament to be involved on an equal basis with the Council in the nomination and dismissal process of the Europol Director clearly shows insufficient Parliamentary control on Europol. Europol's engagement to send information to the European Parliament the general report on Europol activities in the previous year, the Europol's future activities report and the five-years financing plan has not yet been met⁴.

This situation does not seem satisfactory. One could claim that Europol is a European intelligence service⁵ and therefore should give priority to security rather than transparency. However, by looking at its mission statement it is clear that this body provides essentially an information and analysis system without having executive powers. In the so-called Area of freedom, security and justice, such an imbalance between security goals and transparency is no longer acceptable.

Conclusions

Europol can be a very useful support to the Member States law enforcement authorities in preventing and combating serious forms of international organised crime. However, for the reasons stated above, the European Parliament criticises the lack of sufficient democratic control, transparency and accountability of this body at both national and European levels. Your rapporteur strongly argues for the reform of the organisation and working system of Europol in such a way that will provide the European Parliament with the necessary instruments to supervise Europol activities to guarantee the democratic control that our institution is there to secure.

It is for this reason, and in keeping with the Parliament's established practice, that your rapporteur proposes the rejection of the initiative on which the Parliament is being consulted here.

(CNS), A6-0139/2005, p.6

¹ The Protocol *Official Journal C 002 , 06/01/2004 P. 0001 - 0012* amending the Convention on the Establishment of a European Police Office (Europol Convention), Council Act of 27 November 2003.

² *ibid.*, art. 32 (a) par. 17, p. 7.

³ *ibid.*, art.34, par. 18, p. 7.

⁴ *ibid.*, art. 28 (10) and art. 35 (4).

⁵ Work Programme 2007, Europol, The Hague 31 March 2006, p. 3.