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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 20.12.2006
SEC(2006) 1683

COMMISSION STAFF WORKING DOCUMENT

COUNCIL DECISION

establishing the European Police Office (EUROPOL)

SUMMARY IMPACT ASSESSMENT

{COM(2006) 817 final}
{SEC(2006) 1682}

**COMMISSION STAFF WORKING DOCUMENT
COUNCIL DECISION ESTABLISHING THE EUROPEAN POLICE OFFICE**

Summary IMPACT ASSESSMENT

1. what problem is the proposal expected to tackle?

The European Police Office (Europol) was created in 1995, on the basis of a Convention between Member States. Europol was the first organisation set up under the provisions of the Treaty on European Union.

Since then, a significant number of legislative instruments have been adopted, including instruments establishing other bodies and agencies dealing with security related issues. The most recent examples are Eurojust and CEPOL, both set up using a Council Decision as their legal basis, an instrument introduced by the Amsterdam Treaty. Whereas any amendment to a Convention normally requires ratification by all signatory parties, changes to a Decision can be decided directly by the Council (by unanimity) after consultation of the European Parliament.

The discussions held under the Austrian and Finnish Presidencies have demonstrated that even after the entry into force of the three Protocols, further improvements to Europol's functioning are desirable. Europol's current framework needs to be brought in line with new security threats that have emerged which require novel approaches. Preliminary discussions within the Council structures on the future of Europol have demonstrated that there is overwhelming support from the Member States for replacing the Europol Convention with a Council Decision.

2. What are the overall policy objectives?

The overall policy objective of the proposal is to provide Europol with a legal framework which can be more easily adapted to changing circumstances. In terms of concrete policy objectives, the proposal should ensure that:

- Europol is able to better fulfil its mission of supporting the law enforcement authorities of the Member States in their fight against serious crime, including terrorism;
- Europol's mandate is brought in line with the high level political vision for Europol laid down in the Constitutional Treaty;
- Europol's legal framework is brought in line with the legal framework of other bodies working in the third pillar area, in particular Eurojust and CEPOL;
- Europol's legal framework allows it to fully support the principle of availability of law enforcement information;
- simplification of Europol's functioning is achieved;
- the high level of data protection which is currently guaranteed through the Europol

Convention and its implementing measures will be maintained or improved upon where feasible;

- involvement in Europol's functioning of the European Parliament is increased;
- Europol's day-to-day work is not unduly influenced by changes to the legal framework though carefully considered transitional arrangements which provide legal certainty for Europol and its partners and respect the existing rights of Europol staff.

3. What are the main policy options available to reach the objectives?

A number of different policy options have been considered by the Commission in the preparation of this proposal, most of which were discarded at an early stage given the developments over the past few years.

The "do-nothing" option was soon discarded, given the clear difficulties which are currently experienced with the procedures for amendment of the Europol Convention. Moreover, as no agreement has been reached on the future of the Constitutional Treaty, it remains uncertain what future legislative instruments would be available to improve Europol's current situation. A final point was the fact that the JHA Council, in its Conclusions of 1-2 June 2006, has called to consider whether and how to replace by 1 January 2008, 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.

A second option was to replace the Europol Convention by a Council Decision, and to propose at the same time a Protocol to abrogate the Europol Convention. After careful legal analysis, the Commission took the view¹ that a Protocol abrogating the Europol Convention was not necessary. After further discussions within the Council structures, the Commission's position was supported by a very large majority of Member States, as well as by the Legal Service of the Council.

A third option would have been to replace the Europol Convention by a Council Decision without stipulating that Europol would be financed from the Community budget. However, in the Commission's perspective, the political choice for financing Europol from the Community budget is the only logical one, as Council and Parliament will decide together on Europol's budget, as part of the overall budget decision making process, reinforcing the democratic control over Europol. Moreover, subjecting Europol to all the standard instruments (UE staff and budget regulations) will result in a significant administrative simplification. In addition it should be noted that under Article 41(3) TEU "Operational expenditure to which the implementation of those provisions gives rise shall (also) be charged to the budget of the European Communities, except where the Council acting unanimously decides otherwise."

Given the problems due to the current legal instrument, only a Framework Decision or Council Decision have been considered. As Framework Decisions are rather instruments aimed at harmonising the legislation of Member States, a Council Decision based on Article 34(2)(c) TEU appears to be the most appropriate

¹ Commission Staff Working Document (SEC 2006 (851) of 21 June 2006)

instrument for establishing a body under Title VI TEU. In the preparation of the proposal, several options for improving Europol's functioning have been studied, many of which had been identified through the work done under the Austrian Presidency and compiled in a so-called "options paper".

4. What are the impacts – positive and negative – expected from the retained option?

In general terms, the proposal aims at improving Europol's functioning and supporting the policy objective of enhancing police cooperation.

The Member States did want to see a careful evolution of Europol as an organisation, but they did not support a "revolution" in the sense of a completely redesigned organisation. In line with this clear message, the proposal does include a number of the changes proposed and supported by the Member States and Europol, but does not alter the character of the organisation fundamentally.

A Council Decision will ensure that any further changes to Europol's legal framework which may become necessary can be implemented. Equally, the application of well-known and modernised provisions regulating Europol's budget and the associated procedures, as well as the application of the EU Staff Regulations to Europol's staff, will significantly simplify the management of the organisation, and the decision making and control over its budget.

The most direct positive effect of the change to Europol's mandate is that it is no longer bound to the restriction that an organised criminal structure must be involved before Europol can act. This requirement has caused many problems of interpretation in daily practice.

Although it is certainly true that the transition will require a significant amount of work, this is a one-off investment. Well-considered transitional arrangements will allow Europol to continue to focus on its core tasks, even whilst the transition process is underway. Considering that Europol employs more than 400 people, with an annual budget of around 60 million Euro, and has well established relations with various partners, the change process must be managed carefully and transparently for all involved. This can be done through careful communication and respecting established rights.

The implementation of the principle of availability in daily practice will still require extensive discussions. The proposal is therefore limited to providing a clear legal basis for Europol to have wider access to both national and international databases, given that such access is only possible if the applicable national or international legal instruments provide for this.

All the safeguards which have been put in place in the past to ensure the current level of data protection are untouched by the proposal. The satisfactory role of the Joint Supervisory Body is left largely unchanged whilst the proposal foresees possibilities for co-operation with the European Data Protection Supervisor where appropriate. In some instances, such as the introduction of an independent Data Protection Officer at Europol, and the simplification and clarification of the rights of citizens, the level of

protection has even been improved upon. The benefit is clear in terms of ensuring full trust in Europol as a reliable and trustworthy law enforcement organisation by the authorities of the Member States

A financial impact is to be expected for the Community budget, as a result from it being the new source of funding for Europol. Appropriate amounts have already been reserved under the Financial Framework 2007-2013: 82 million € for 2010, running up to 85 million € in 2013. The involvement of the European Parliament in the decision making procedure to establish Europol's budget will mean better democratic control at the European level. Europol's staff will in the future come under the general EU Staff Regulations, with the aim to guarantee existing rights and to avoid increases in salary costs. The proposal is based on the assumption that staff which will be working for Europol at the time of the entry into force of the Decision will be offered a temporary contract under the EU Staff Regulations.

As far as Human rights are concerned, the proposal is in line with Community law and with the Charter on Fundamental Rights. Even though it is clear that the proposed Decision will have an effect on the privacy right of citizens as guaranteed under Article 7 of the Charter, as well as on the right to protection of personal data as guaranteed under Article 8 of the Charter, the interference with these rights is justified in accordance with of Article 52 of the Charter. Specifically, the limitations on these rights provided for by the proposal are proportionate and necessary to meet the generally recognised objectives of preventing and combating crime and terrorism.

As for international agreements, the transitional provisions provide that all existing agreements will continue to be in force. However, the co-operation partners of Europol will be given a period of time to consider whether the change has an effect on the agreement in force, and if so, whether this should lead to any changes. Moreover, the proposal aims to revise the system in such a way that Europol's international relations will be more closely associated with the external relations strategy of the Union as a whole. Except for working arrangements not involving exchange of personal data, the aim is to come to over-arching agreements with third States which would regulate all aspects of co-operation between them and the European Union in the area of Justice and Home Affairs.

Finally, after a decision on the proposal has been reached, Europol will first have to go through a transitional period involving a significant effort mainly from the legal, financial and personnel units. Investigative actions should not be affected. After this transitional period the Europol Decision will become fully applicable.

5. how to monitor and evaluate the results and impacts of the proposal after implementation?

The results and impacts of the proposal after implementation will be monitored and evaluated on a continuous basis, mainly by Europol's Management Board, but also by the Council, the Commission and the European Parliament on the basis of annual reports. The proposal also foresees the introduction of a monitoring system and an external evaluation to be conducted every five years.

6. stakeholder consultation

The proposal is to a large extent based on the wide consultation of interested parties under the Austrian Presidency of the Council; starting with a discussion at the informal JHA Council in January 2006, followed by a High Level Conference on Europol's future in February. This High Level Conference brought together representatives of the law enforcement authorities of the Member States, of Europol and Eurojust, of Europol's Joint Supervisory Body, of the Commission, and of academia. It was intended to provide material for the further work on defining the contemporary thinking on the future of Europol. One of its conclusions was that using the current version of the TEU as a basis for Europol would mean to replace the Convention by a Council Decision. As to the mandate of Europol it was suggested that Europol should be tasked to deal with "cross-border serious crime".

Cooperation with third States and international organisations was identified as an issue of particular relevance. The modalities for Europol to enter into structured cooperation with third parties, however, clearly need improvement. The Conference also concluded that Europol needs better access to information. Proposals were made for the Management Board to act more strategy minded. Both the results of the High Level Conference and the work of the Friends of the Presidency Group, as laid down in the Options paper, have been the inspiration for the largest part of the Commission's proposal.

After the High Level Conference, work continued through a number of meetings of a "Friends of the Presidency" Group, in which almost all Member States were represented. The results of this work were consolidated in an Options paper, which presents a large number of options to improve Europol's functioning. Further contacts with interested parties – including Europol - in the preparation of the proposal also proved beneficial in the preparation of the proposal.

Given that this work had already involved all interested parties, further formal consultation efforts were not considered necessary in the preparation of the proposal.

7. commission draft proposal and justification

The initiative chosen consists of a proposal for a Council Decision establishing Europol, and replacing the current Europol Convention. The final objective is to create a completely new legal framework for Europol, which will improve its effectiveness in supporting the law enforcement authorities of the Member States.

The Commission came to the conclusion that Europol needs an up-dated legal framework, in the form of a Council Decision, that it should be financed from the Community Budget and that its staff should become subject to the general EU Staff Regulations. Council conclusions adopted in June 2006 and submitted to the Council meeting in December 2006 support this evolution.

The proposal best address the needs for improvement of Europol, both in terms of its legal framework, and in terms of its mandate and tasks. More ambitious options –

particularly providing Europol with independent powers of investigation— have been discussed but were soon discarded. None of the less ambitious options offer the significant advantages of the current proposal.