

EUROPEAN PARLIAMENT

1999



2004

Session document

FINAL
A5-0312/2000

27 October 2000

REPORT

on the initiative from the Portuguese Republic with a view to the adoption of a Council Act on the drawing up on the basis of Article 43(1) of the Convention on the establishment of a European Police Office (Europol Convention) of a Protocol amending Article 2 and the Annex to that Convention (9426/2000 – C5-0359/2000 – 2000/0809(CNS))

Committee on Citizens' Freedoms and Rights, Justice and Home Affairs

Rapporteur: Anna Karamanou

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)

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PROCEDURAL PAGE

By letter of 5 July 2000 the Council consulted Parliament, pursuant to Article 39(1) of the EU Treaty, on the initiative from the Portuguese Republic with a view to the adoption of a Council Act on the drawing up on the basis of Article 43(1) of the Convention on the establishment of a European Police Office (Europol Convention) of a Protocol amending Article 2 and the Annex to that Convention (9426/2000 - 2000/0809 (CNS)).

At the sitting of 7 July 2000, the President of Parliament announced that she had referred this initiative to the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs as the committee responsible and to the Committee on Economic and Monetary Affairs and the Committee on Legal Affairs and the Internal Market for their opinions (C5-0359/2000).

The Committee on Citizens' Freedoms and Rights, Justice and Home Affairs had appointed Anna Karamanou rapporteur at its meeting of 29 August 2000.

It considered the initiative of the Portuguese Republic and draft report at its meetings of 13-14 September, 10-12 October and 23-24 October 2000.

At the latter meeting it adopted the draft legislative resolution by 33 votes to 2, with 1 abstention.

The following were present for the vote: Graham R. Watson, chairman; Robert J.E. Evans and Bernd Posselt, vice-chairmen; Anna Karamanou, rapporteur; Jan Andersson (for Adeline Hazan), Alima Boumediene-Thiery, Rocco Buttiglione, Marco Cappato, Michael Cashman, Charlotte Cederschiöld, Carlos Coelho, Thierry Cornillet, Gérard M.J. Deprez, Giorgos Dimitrakopoulos (for Marcello Dell'Utri), Pernille Frahm, Evelyne Gebhardt (for Sérgio Sousa Pinto), Bertel Haarder (for Jan-Kees Wiebenga), Jorge Salvador Hernández Mollar, Margot Keßler, Timothy Kirkhope, Ewa Klamt, Alain Krivine (for Giuseppe Di Lello Finuoli), Baroness Sarah Ludford, Minerva Melpomeni Malliori (for Gerhard Schmid), Lucio Manisco (for Fodé Sylla), Hartmut Nassauer, William Francis Newton Dunn (for Daniel J. Hannan), Arie M. Oostlander (for Enrico Ferri), Elena Ornella Paciotti, Hubert Pirker, Martin Schulz, Patsy Sørensen, Joke Swiebel, Anna Terrón i Cusí, Maurizio Turco (for Frank Vanhecke) and Gianni Vattimo.

The opinions of the Committee on Economic and Monetary Affairs and the Committee on Legal Affairs and the Internal Market are attached.

The report was tabled on 27 October 2000.

The deadline for tabling amendments will be indicated in the draft agenda for the relevant part-session.

LEGISLATIVE PROPOSAL

Initiative from the Portuguese Republic with a view to the adoption of a Council Act on the drawing up on the basis of Article 43(1) of the Convention on the establishment of a European Police Office (Europol Convention) of a Protocol amending Article 2 and the Annex to that Convention (9426/2000 – C5-0359/2000 – 2000/0809(CNS))

This initiative is amended as follows:

Text proposed by the Portuguese Republic¹

Amendments by Parliament

(Amendment 1)
Title

Initiative from the Portuguese Republic with a view to the adoption of a Council Act on the drawing up on the basis of Article 43(1) of the Convention on the establishment of a European Police Office (Europol Convention) of a Protocol amending Article 2 and the Annex to that Convention

Initiative from the Portuguese Republic with a view to the adoption of a Council Act on the drawing up on the basis of Article 43(1) of the Convention on the establishment of a European Police Office (Europol Convention) of a Protocol amending Article 2 and the Annex to that Convention, **and Articles 28, 29, 34 and 40**

Justification:

See the justifications to the following amendments which extend the scope of the Protocol.

(Amendment 2)
ARTICLE 1 (1a) (new)
Article 28 (Europol Convention)

1a. Article 28 of the Europol Convention is amended as follows:

Management Board
2. The Management Board shall be composed of one representative of each Member State. Each member of the Management Board shall have one vote.
The European Parliament shall be represented by two observers for the period of one parliamentary term.

¹ OJ C 200, 13.7.2000, p. 1.

Justification:

This amendment to Article 28 of the Europol Convention aims to increase the requisite democratic accountability of Europol, in line with EP scrutiny of the European Central Bank and the European Ombudsman (Article 112(2)(b), Article 113(3) and Article 195 of the EC Treaty).

(Amendment 3)
ARTICLE 1 (1b) (new)
Article 29 (Europol Convention)

1b. Article 29 of the Europol Convention is amended as follows:

Director

1. Europol shall be headed by a Director appointed by the Council, acting ***by a two-thirds majority*** in accordance with the procedure laid down in Title VI of the Treaty on European Union after obtaining the opinion of the Management Board ***and after consulting the European Parliament***, for a four-year period renewable once.

6. The Director and the Deputy Directors may be dismissed by a decision of the Council, to be taken in accordance with the procedure laid down in Title VI of the Treaty on European Union by a two-thirds majority of the Member States, after obtaining the opinion of the Management Board ***and after consulting the European Parliament***.

Justification:

The proposed amendments to Article 29 of the Europol Convention aim to increase the democratic accountability of Europol. To enable the EP to exercise democratic control, it must have a say in the selection and possible dismissal of the Europol Director.

(Amendment 4)
ARTICLE 1 (1c) (new)
Article 34 (Europol Convention)

1c. Article 34 of the Europol Convention is amended as follows:

Informing the European Parliament

1. The Council Presidency shall each year forward a special report to the European Parliament on the work of Europol. ***The Council Presidency shall present that report to the European Parliament which may request an exchange of views on that basis.***

1.3 (new)

The Director of Europol may, on a request from the European Parliament or on his own initiative, appear before the competent committees of the European Parliament for an exchange of views, when circumstances so require.

Justification:

The proposed amendments to Article 34 of the Europol Convention also aim to increase the democratic accountability of Europol. To enable the EP to exercise democratic control, Europol should account for its activities in an annual exchange of views, as do the European Central Bank and the European Ombudsman, for example (Article 112(2)(b), Article 113(3) and Article 195 of the EC Treaty). In addition, the Director of Europol should have the opportunity of appearing before the EP's competent committees when circumstances so require.

(Amendment 5)

ARTICLE 1 (1d) (new)

Article 40 (Europol Convention)

1d. Article 40 of the Europol Convention is amended as follows:

Settlement of disputes
(paragraphs 1 and 2 replaced by the following text):

The Court of Justice shall have jurisdiction to rule on any dispute or conflict between Member States regarding the interpretation or the application of the

Convention, whenever such disputes cannot be settled by the Council within six months of their arising.

Justification:

This amendment aims to bring Europol under the jurisdiction of the Court of Justice in accordance with Article 35(7) of the EU Treaty.

(Amendment 6)
Article 2(3)

3. This Protocol shall enter into force 90 days after the notification, referred to in paragraph 2, by the Member State which, being a member of the European Union on the date of adoption by the Council of the act establishing this Protocol, is the ***last*** to fulfil that formality.

3. This Protocol shall enter into force 90 days after the notification, referred to in paragraph 2, by the Member State which, being a member of the European Union on the date of adoption by the Council of the Act establishing this Protocol, is the ***tenth*** to fulfil that formality.

Justification:

Decision-making by majority will be essential in an enlarged Union. A proportion of two-thirds seems the right majority among Member States.

DRAFT LEGISLATIVE RESOLUTION

European Parliament legislative resolution on the initiative from the Portuguese Republic with a view to the adoption of a Council Act on the drawing up on the basis of Article 43(1) of the Convention on the establishment of a European Police Office (Europol Convention) of a Protocol amending Article 2 and the Annex to that Convention (9426/2000 – C5-0359/2000 – 2000/0809(CNS))

(Consultation procedure)

The European Parliament,

- having regard to the initiative from the Portuguese Republic (9426/2000¹),
 - having regard to Article 34(2)(b) of the EU Treaty,
 - having been consulted by the Council pursuant to Article 39(1) of the EU Treaty (C5-0359/2000),
 - having regard to Rules 106 and 67 of its Rules of Procedure,
 - having regard to the report of the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs and the opinions of the Committee on Economic and Monetary Affairs and the Committee on Legal Affairs and the Internal Market (A5-0312/2000),
1. Approves the initiative from the Portuguese Republic as amended;
 2. Calls on the Council to notify Parliament should it intend to depart from the text approved by Parliament;
 3. Asks to be consulted again if the Council intends to amend the initiative from the Portuguese Republic substantially;
 4. Instructs its President to forward its position to the Council, the Commission and the Government of the Portuguese Republic.

¹ OJ C 200, 13.7.2000, p. 1.

EXPLANATORY STATEMENT

1. Brief analysis of the Europol Convention

A. 1995 Europol Convention

The Treaty of Amsterdam paved the way for closer cooperation between the Member States' police forces both directly among themselves and through Europol, the embryonic European federal police force.

Article K2 of the Treaty lists the initiatives which police forces and Europol may take. Within five years of the entry into force of the Treaty, Europol should be in a position to undertake joint investigations and operational actions with the Member States' police forces and to set up a research, documentation and statistical network on cross-border crime.

The head of Europol, Jurgen Starbeck, has said that he sees Europol as coordinating investigations with Member States' police forces, being able to question suspects but not having the power of arrest and detention.

The establishment of Europol was agreed under the Maastricht Treaty on European Union on 7 February 1992 and came into force on 1 October 1998. Following the adoption of a number of legal acts relating to the Treaty, Europol became fully operational on 1 July 1999.

The headquarters of Europol is in The Hague and the organisation is supported by the Member States through the exchange of data and information (TECS - the Europol computer system - and liaison officers), it has a staff of 220 and is accountable to the Council of Ministers for Justice and Home Affairs.

B. The scope of Europol's competence

Portugal's initiative aims to extend Europol's competence to money laundering in general. The terms of reference of Europol as referred to in Article 2 of the Europol Convention cover drug trafficking, immigrant smuggling, trade in stolen vehicles, trade in human beings, including child pornography, counterfeiting currency and forging other means of payment, trafficking in radioactive and nuclear substances, terrorism, and money laundering activities relating to the above forms of crime only.

The aim of the amendment proposed by the Portuguese Republic is to establish a general framework of competence for Europol in relation to money laundering. Thus, the proposed amendment incorporates in Article 2(2) the combating of money laundering, as a new Europol task. That notwithstanding, paragraph 3 of the same article states that Europol's competence in regard to illegal money laundering activities does not extend to the original offences, i.e. to the crimes which preceded the money laundering, unless those are covered by Article 2(2).

2. Brief analysis of the proposal to amend the Europol Convention

Money laundering has assumed vast proportions throughout the world. We can only endorse the notion of extending the powers of Europol. This Protocol is one of the necessary measures being considered with a view to devising a European strategy for police and judicial cooperation on money laundering.

However, the European Parliament cannot accept - unless it agrees to a merely formal consultative role - that its powers are restricted simply to delivering an opinion on the proposal to extend Europol's competence, with no reference to other aspects of that organisation's operation.

The European Parliament is not in fact in a position to assess the operation of Europol, the extent to which it is effective, the quality of its computer system, TECS, or the measures used to combat money laundering, for example, without greater democratic and judicial accountability.

A. The lack of democratic accountability of Europol

The European Parliament has expressed its dissatisfaction on many occasions with the lack of democratic accountability of Europol in relation to Article 39 of the EU Treaty. Article 39 refers to the EP's right to deliver an opinion and to be informed on matters falling within Title IV, i.e. police and judicial cooperation in criminal matters. Article 34 of the Europol Convention, however, restricts the role of the European Parliament simply to delivering annual reports. The Cederschiöld and Nassaur reports on the same subject also stressed this serious 'anomaly'.

Can we therefore, extend the competence of Europol without amending Article 34 of the Europol Convention which restricts the role of the EP?

In order for the EP to exercise democratic control, Europol must, as with the other European Institutions (e.g. the European Central Bank and the European Ombudsman) report on its activities in an annual exchange of views. In addition, the Director of Europol should have the opportunity of appearing before Parliament's competent committees when circumstances so require. Finally, the EP should have a say in the choice of the Director of Europol.

B. The lack of judicial accountability of Europol

It is equally unacceptable that possible disputes or conflicts between Member States or between Europol and Member States cannot be brought before the Court of Justice despite the provisions of Article 35 of the EU Treaty which refer to matters relating to police and judicial cooperation in criminal matters. This contradiction conflicts with our democratic values, particularly in regard to human rights, and is particularly dangerous given that Europol seems to be assuming more and more responsibilities.

C. The validity of the protocol

It is regrettable that the procedure for the entry into force of the protocol is based on the same procedure applying to the original Europol Convention, i.e. it must also be adopted by the 'last' Member State.

This procedure will delay the adoptions of the Protocol at EU level. Your rapporteur therefore proposes the procedure which applies to conventions under Title VI of the EU Treaty, i.e. that the Protocol should enter into force after its adoption by eight Member States, as laid down in Article 34 (2)(d).

Conclusion

It makes no sense for the EP to deliver an opinion, without using the opportunity presented by the proposal for extending Europol's sphere of competence to enhance the effectiveness of that institution and increase its accountability, which would promote genuine future police cooperation at EU level.

17 October 2000

OPINION OF THE COMMITTEE ON LEGAL AFFAIRS AND THE INTERNAL MARKET

for the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs

on the initiative from the Portuguese Republic with a view to the adoption of a Council Act on the drawing up on the basis of Article 43(1) of the Convention on the establishment of a European Police Office (Europol Convention) of a Protocol amending Article 2 and the Annex to that Convention
(9426/2000 – C5-0359/2000 – (2000/0809(CNS)))

Draftsman: Klaus-Heiner Lehne

PROCEDURE

At its meeting of 13 September 2000 the Committee on Legal Affairs and the Internal Market appointed Klaus-Heiner Lehne draftsman.

It considered the draft opinion at its meetings of 9 and 17 October 2000.

At the latter meeting it adopted the following conclusions unanimously.

The following were present for the vote: Willi Rothley, acting chairman; Ward Beysen, vice-chairman; Klaus-Heiner Lehne, draftsman; Luis Berenguer Fuster, Maria Berger, Philip Charles Bradbourn, Bert Doorn, Janelly Fourtou, Marie-Françoise Garaud, Heidi Anneli Hautala, The Lord Inglewood, Ioannis Koukiadis, Kurt Lechner, Arlene McCarthy, Donald Neil McCormick, Hans-Peter Mayer, Bill Miller, Elena Ornella Paciotti, Feleknas Uca, Diana Paulette Wallis, Christos Zacharakis and Stefano Zappalà.

SHORT JUSTIFICATION

Background

Since the creation of an area of freedom, security and justice in the EU was determined at the European Council in Tampere (15-16 October 1999), the fight against organised international crime, especially money laundering, has become one of the EU's priorities. Indeed, the conclusions of the Finnish Presidency include the following passage:

'Money laundering is at the very heart of organised crime. It should be rooted out wherever it occurs. The European Council is determined to ensure that concrete steps are taken to trace, freeze, seize and confiscate the proceeds of crime.' It also invited the Council to extend the competence of Europol to money laundering in general, regardless of the type of offence from

which the laundered proceeds originate.

The establishment of a European Police Office, Europol, envisaged in June 1991 by the Luxembourg European Council, was agreed under the Treaty on European Union (TEU) of 7 February 1992. The Convention establishing the Office (Europol Convention) was signed on 26 July 1995, entered into force on 1 October 1998 and was effectively implemented on 1 July 1999.

The objective of this Convention is to improve police cooperation through a constant, confidential and intensive exchange of information between Europol and Member States' national units. While limited at the outset to combating drugs, Europol has had its powers progressively widened to include other criminal activities that can no longer be tackled solely at national level.

Europol's terms of reference have therefore been expanded to include other areas such as, for example, trafficking in human beings, including child pornography, 'where there are factual indications that an organised criminal structure is involved and two or more Member States are affected by the forms of crime in question' (Article 2(1) of the Europol Convention).

Legal basis

As provided for in Article 2(2) of the Convention, the Council, acting unanimously in accordance with the procedure laid down in Title VI of the TEU, may amend the Europol Convention in order to widen its jurisdiction. The draft protocol amending the Europol Convention proposed on the initiative of Portugal on the basis of Article 43(1) of that Convention seeks to extend Europol's jurisdiction to cover illegal money laundering activities. To this end, the draft protocol proposes providing Europol with more effective means of combating money laundering and boosting its scope for helping the Member States with their fight.

CONCLUSION

Given the scale of money laundering in all the Member States, the Portuguese initiative was favourably received by the European Council with a view to enhancing the Union's legal arsenal.

To this end, and despite the legal instruments already in existence (money laundering directive, 1990 Strasbourg Convention, recommendations of the Financial Action Task Force on money laundering), the EU has decided to step up the fight against serious forms of organised transnational crime by widening Europol's powers to include this new area.

The Committee on Legal Affairs and the Internal Market therefore supports the act proposed by the Council on combating money laundering, subject to a simple updating which it would like to see adopted by the committee responsible, the Committee on Citizens' Freedoms and Rights.

AMENDMENTS

The Committee on Legal Affairs and the Internal Market calls on the committee responsible, the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs, to incorporate the following amendment in its report:

Text proposed by the Portuguese Republic

Amendment

Article 1

1(1)(a), second subparagraph (new)

Europol shall also deal with crimes committed or likely to be committed in the course of terrorist activities threatening life, limb, personal freedom or property.

Or. fr

Justification:

Since the Portuguese initiative makes an amendment to paragraph 2, first subparagraph, it is also necessary to update the second subparagraph of that paragraph.

It is also important to recall the proven links which exist between terrorism and money-laundering.

13 October 2000

OPINION OF THE COMMITTEE ON ECONOMIC AND MONETARY AFFAIRS

for the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs

on the initiative from the Portuguese Republic with a view to the adoption of a Council Act on the drawing up on the basis of Article 43(1) of the Convention on the establishment of a European Police Office (Europol Convention) of a Protocol amending Article 2 and the Annex to that Convention

(9426/2000 – C5-0359/2000 – 2000/0809(CNS))

Draftsman: Carles-Alfred Gasòliba i Böhm

PROCEDURE

At its meeting of 5 September 2000 the Committee on Economic and Monetary Affairs appointed Carles-Alfred Gasòliba i Böhm draftsman.

It considered the draft opinion at its meetings of 11 October 2000.

At that meeting it adopted the following conclusions unanimously.

The following were present for the vote: Christa Randzio-Plath (chairman), Ioannis Theonas (vice-chairman), Richard A. Balfe, Luis Berenguer Fuster, Pervenche Berès, Renato Brunetta (for José Manuel García-Margallo y Marfil), Hans Udo Bullmann, Harald Ettl (for Simon Francis Murphy), Jonathan Evans, Ingo Friedrich (for Alexander Radwan), Robert Goebbels, Christopher Huhne, Liam Hyland, Pierre Jonckheer, Othmar Karas, Giorgos Katiforis, Pii-Noora Kauppi, Werner Langen (for Christoph Werner Konrad), Alain Lipietz, Astrid Lulling, Peter Michael Mombaur (for Ioannis Marinou), Fernando Pérez Royo, Bernhard Rapkay, Karin Riis-Jørgensen, Amalia Sartori, Peter William Skinner, Charles Tannock, Marianne L.P. Thyssen, Helena Torres Marques, Bruno Trentin, Theresa Villiers and Karl von Wogau.

SHORT JUSTIFICATION

Having decided to make the Union an area of freedom, security and justice, the European Council has reflected on several occasions on ways to combat organised crime and, in particular, to prevent the laundering of the monies that are the proceeds of criminal activity. At its special meeting in Tampere on 16 June 2000, which was devoted to matters of this kind, it called on the Council to extend Europol's powers to cover the laundering of money in general, irrespective of the type of offence from which it was derived.

It was on this basis that Portugal, which held the Council Presidency at the time, presented an initiative for a Council Act amending by means of a protocol the Convention on the Establishment of a European Police Office (Europol Convention) so as to include action to combat money laundering within Europol's remit.

The protocol annexed to the draft act consists of an essentially legal text amending the relevant passages of the Europol Convention. In Article 2(2), the term 'illegal money laundering activities' is inserted in second place in the list of tasks entrusted to Europol, immediately after action to prevent and combat unlawful drug trafficking. However, in the following paragraph (Article 2(3)), the offences predicate to illegal money laundering activities are expressly excluded from Europol's remit. Lastly, the part of the annex which refers to Article 2(2) is amended accordingly.

CONCLUSIONS

In the reports and opinions it has adopted, and in particular the opinion of 1 March 2000 for the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs on financial intelligence units (Directive 91/308/EEC), the Committee on Economic and Monetary Affairs has repeatedly stressed the need to tackle money laundering, which is indispensable for achieving the financial objective of any criminal activity and which, owing to the volume of money involved, poses a risk to the legal economy. The committee must therefore welcome this extension of Europol's powers, which should enable it to provide more effective support for Member States' efforts in this area and improve coordination of such efforts at the European level.

The Committee on Economic and Monetary Affairs considers that the proposed text may be adopted without amendment. It therefore recommends that the proposed Council act be approved.