

# EUROPEAN PARLIAMENT

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**A5-0107/2003**

26 March 2003

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## **REPORT**

1. on the initiative by the Kingdom of Denmark with a view to adopting a Council Act amending the Council Act of 3 November 1998 adopting Rules on the confidentiality of Europol information  
(13875/2002 – C5-0553/2002 – 2002/0823(CNS))

2. on the initiative by the Kingdom of Denmark with a view to adopting a Council Act amending the Staff Regulations applicable to Europol employees  
(13873/2002 – C5-0555/2002 – 2002/0822(CNS))

3. on the initiative of the Hellenic Republic with a view to the adoption of a Council Decision adjusting the basic salaries and allowances applicable to Europol staff  
(6314/2003 – C5-0066/2003 – 2003/0806(CNS))

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

Rapporteur: Maurizio Turco



### ***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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## PROCEDURAL PAGE

By letter of 20 November 2002 the Council consulted Parliament, pursuant to Article 39(1) of the EU Treaty, on the initiative by the Kingdom of Denmark with a view to adopting a Council Act amending the Council Act of 3 November 1998 adopting Rules on the confidentiality of Europol information (13875/2002 – 2002/0823(CNS)).

By letter of 20 November 2002 the Council consulted Parliament, pursuant to Article 39(1) of the EU Treaty, on the initiative by the Kingdom of Denmark with a view to adopting a Council Act amending the Staff Regulations applicable to Europol employees (13873/2002 – 2002/0822(CNS)).

At the sitting of 4 December 2002 the President of Parliament announced that he had referred the initiatives to the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs as the committee responsible (C5-0553/2002, C5-0555/2002).

The committee appointed Maurizio Turco rapporteur at its meeting of 10 December 2002.

By letter of 28 February 2003 the Council consulted Parliament, pursuant to Article 39(1) of the EU Treaty, on the initiative of the Hellenic Republic with a view to the adoption of a Council Decision adjusting the basic salaries and allowances applicable to Europol staff (6314/2003 – 2003/0806(CNS)).

At the sitting of 10 March 2003 the President of Parliament announced that he had referred the initiatives to the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs as the committee responsible and the Committee on Budgets for its opinion (C5-0066/2003).

The committee appointed Maurizio Turco rapporteur at its meeting of 19 March 2003 and decided to join this procedure to the report on the two Danish initiatives.

It considered the initiatives by the Kingdom of Denmark, the initiative of the Hellenic Republic and the draft report at its meetings of 20 January 2003, 17 February 2003, 19 March 2003 and 25 March 2003.

At the latter meeting it adopted the draft legislative resolution by 30 votes to 1, with 0 abstentions.

The following were present for the vote: Jorge Salvador Hernández Mollar (chairman), Johanna L.A. Boogerd-Quaak and Giacomo Santini (vice-chairmen), Maurizio Turco (rapporteur), Mary Elizabeth Banotti, Christian Ulrik von Boetticher, Alima Boumediene-Thiery, Kathalijne Maria Buitenweg (for Pierre Jonckheer), Mogens N.J. Camre (for Roberta Angelilli), Marco Cappato (for Mario Borghezio), Charlotte Cederschiöld, Carmen Cerdeira Morterero, Ozan Ceyhun, Carlos Coelho, Thierry Cornillet, Gérard M.J. Deprez, Giuseppe Di Lello Finuoli, Margot Keßler, Timothy Kirkhope, Eva Klamt, Alain Krivine (for Ole Krarup), Lucio Manisco (for Fodé Sylla), Claude Moraes (for Sérgio Sousa Pinto), Marcelino Oreja Arburúa, Elena Ornella Paciotti, Martine Roure, Heide Rühle, Olle Schmidt (for Baroness Ludford), Ilka Schröder, Patsy Sörensen, the Earl of Stockton (for Hubert Pirker), Joke Swiebel and Anna Terrón i Cusí.

The Committee on Budgets decided on 24 March 2003 not to deliver an opinion.

The report was tabled on 26 March 2003.

## **1. DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION**

**on the initiative by the Kingdom of Denmark with a view to adopting a Council Act amending the Council Act of 3 November 1998 adopting Rules on the confidentiality of Europol information  
(13875/2002 – C5-0553/2002 – 2002/0823(CNS))**

**(Consultation procedure)**

*The European Parliament,*

- having regard to the initiative by the Kingdom of Denmark (13875/2002)<sup>1</sup>,
  - having regard to Article 34(2)(c) of the EU Treaty,
  - having regard to Article 39(1) of the EU Treaty, pursuant to which the Council consulted Parliament (C5-0553/2002),
  - 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 (A5-0107/2003),
1. Rejects the initiative by the Kingdom of Denmark;
  2. Calls on the Kingdom of Denmark to withdraw its initiative and submit a new one;
  3. Instructs the President to forward its position to the Council and Commission, and the government of the Kingdom of Denmark.

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<sup>1</sup> OJ C 286, 22.11.2002, p. 19.

## 2. DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

**on the initiative by the Kingdom of Denmark with a view to adopting a Council Act amending the Staff Regulations applicable to Europol employees (13873/2002 – C5-0555/2002 – 2002/0822(CNS))**

### **(Consultation procedure)**

*The European Parliament,*

- having regard to the initiative by the Kingdom of Denmark (13873/2002)<sup>1</sup>,
  - having regard to Article 34(2)(c) of the EU Treaty,
  - having regard to Article 39(1) of the EU Treaty, pursuant to which the Council consulted Parliament (C5-0555/2002),
  - 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 (A5-0107/2003),
1. Rejects the initiative by the Kingdom of Denmark;
  2. Calls on the Kingdom of Denmark to withdraw its initiative and submit a new one;
  3. Instructs the President to forward its position to the Council and Commission, and the government of the Kingdom of Denmark.

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<sup>1</sup> OJ C 286, 22.11.2002, p. 20.



### **3. DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION**

**on the initiative of the Hellenic Republic with a view to the adoption of a Council Decision adjusting the basic salaries and allowances applicable to Europol staff (6314/2003 – C5-0066/2003 – 2003/0806(CNS))**

**(Consultation procedure)**

*The European Parliament,*

- having regard to the initiative of the Hellenic Republic (6314/2003)<sup>1</sup>,
  - having regard to Article 34(2)(c) of the EU Treaty,
  - having regard to Article 39(1) of the EU Treaty, pursuant to which the Council consulted Parliament (C5-0066/2003),
  - 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 (A5-0107/2003),
1. Rejects the initiative of the Hellenic Republic;
  2. Calls on the Hellenic Republic to withdraw its initiative and submit a new one;
  3. Instructs the President to forward its position to the Council and Commission, and the government of the Hellenic Republic.

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<sup>1</sup> OJ C 52, 6.3.2003, p. 17.

## EXPLANATORY STATEMENT <sup>1</sup>

The European Parliament has been consulted on three Danish proposals and one Greek proposal concerning Europol: an act amending the Rules on the confidentiality of Europol information; an act amending the Staff Regulations applicable to Europol employees; a decision adjusting the basic salaries and allowances applicable to Europol staff and a Protocol amending the Europol Convention.

**In my capacity as EP rapporteur for the first three dossiers, I propose to colleagues to reject these three initiatives for the reasons explained below.**

### **1. Confidentiality and classification of Europol documents**

The Council proposal on confidentiality of Europol information is aimed at harmonising Europol classification systems to those of the Commission and of the Council. It provides for three levels of classification: ‘top secret’, ‘secret’ and ‘confidential’, which are also foreseen by the Regulation on public access to documents, Regulation 1049/2001.

A further level of ‘classification’ is also foreseen in the Council proposal: namely, ‘**restricted**’. Also included in the initiative is a general principle that all Europol documents – except those that are clearly public – are coded ‘**Europol Unclassified not for public dissemination**’.

The other side of the coin to confidentiality of information and documents is **access to documents**. On this issue, Europol has not yet adopted rules on access to documents following Regulation 1049/2001, although a procedure is included in the proposed Protocol to the Europol Convention, this procedure only requires Europol to ‘take account of the principles in Regulation 1049/2001’ and does not foresee the consultation of the EP.

The rapporteur notes that the proposed rules on confidentiality and classification of Europol documents are contrary to the principles in Regulation 1049/2001: the code ‘restricted’ is not mentioned in the EC Regulation, while ‘Europol Unclassified – not for public dissemination’ is contrary to the principles on access to documents, that provide for all documents to be public except those that are covered by specific exceptions. Furthermore, Europol has not yet adopted rules implementing Regulation 1049/2001. The rapporteur is conscious of the fact that information dealt by Europol is of a sensitive nature, but recalls that the principle of legality has to be fully respected: the internal rules on confidentiality of EU organs must be consistent with Regulation 1049/2001. **The Danish proposal has evidently too many shortcomings and should be – in your rapporteur's opinion – rejected, taking into due account also the following considerations.**

### **2. Amendments to the Staff Regulations applicable to Europol employees**

Despite repeated requests by the EP for the involvement of the EP in the procedure for the Europol budget and in the procedure for the appointment and dismissal of Europol's Management Board meetings and for the funding of Europol through the Community budget,

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<sup>1</sup> The rapporteur thanks Ottavio Marzocchi, advisor to Radical MEPs, for his contribution to this report.

nothing has changed. The EP is again being asked to ‘rubber stamp’ changes to the Staff Regulations applicable to Europol employees.

### **3. The unsolved problem: democratic control of Europol**

There has been since the creation of Europol a wide debate and repeated requests have been expressed on the necessity of **strengthening democratic control** of Europol through wider **parliamentary and judicial** scrutiny. Europol is in fact submitted to a fragmented and indirect control from national parliaments that are anyway not able to organise, individually, a sufficient parliamentary supervision of the Council in police affairs and of Europol.

If we look at the **typologies of democratic control** on police and *intelligence* services in democracies, we note that Parliaments – and notably their special committees charged with police and intelligence services control – are often provided with strong **powers**: appointment and dismissal powers of the leading bodies (USA); budgetary (USA, Spain) and budgetary control powers (USA, Spain, UK); determining priorities of action, promoting legislative initiatives and proposals (USA, Italy); calling for hearings and for acquisition of documents (Germany); on the spot controls and searches (Belgium, Germany), acquisition of documents (Germany, Belgium, USA).

The **European Parliament** has on the contrary none of the above-mentioned powers over Europol – apart from a limited control, such as a weak right to be informed and consulted. For this reason the EP has repeatedly requested to the Council to reform the Europol Convention to allow for concrete democratic control – and powers – over Europol, notably in the **Nassauer, Karamanou, Turco and Deprez reports**. These reports asked for:

- budgetary powers: EP involvement in the Europol budget procedure; Europol funding through the Community budget
- appointment powers: EP involvement in the appointment and dismissal of Europol's Director and Deputy Directors, and two EP elected representatives to take part in the Management Board meetings
- information and consultation rights: full respect of EP rights to be informed and consulted; an interinstitutional agreement on this issue; an extension of the documents on which the EP shall be consulted
- the revision of the Europol Convention to bring it into line with higher standards and methods of democratic control
- the strengthening of judicial control by the Court of Justice
- and ultimately the communitarisation of Europol

The **European Commission** expressed itself on the issue in a communication on ‘democratic control over Europol’, that proposed to establish ‘a **joint committee**, consisting of members of both the Member States’ and European Parliament committees responsible for police matters’.

In October 2002 the EP approved its last report on Europol, again by Mr **Deprez**, that **rejected** an uncontroversial Council proposal on Europol personnel. The draftsman explained the reasons for rejection in his explanatory statement: ‘1. The Council's offhandedness’ (absence of an explanatory memorandum)... 2. Bogus consultation: In all likelihood, given what we already know, the Council will not take a blind bit of notice of any amendments by

Parliament.... It is in no way in the interests of Parliament, as a democratic institution representing Europe's citizens, to go along with what is basically a mug's game. 3. Rejection – making a political point’. After explaining what the EP asked in terms of Europol reform, he stated: ‘To date, no action is known to have been taken by the Council on Parliament's recommendation. In your rapporteur's view, it is not in the interests of Parliament, which has been no more than a legislative pygmy in such matters to date, to behave like a political pygmy too.’

The issue of democratic control of Europol has been also recently debated in the **Working Group X ‘Freedom, security and justice’ of the Convention** on the reform of EU Treaties. According to the minutes of the WG, during a hearing the **Europol Director, Mr Storbeck**, affirmed that ‘parliamentary control of Europol is currently unclear’; he stated the difficulties in being accountable to too many national parliaments and that stronger and more efficient democratic control would be in Europol's own interest. He mentioned the perspective of **control by the European Parliament** as a possible solution. The above-mentioned working group has consequently drafted a **final report** which supports the EP's requests. It states: ‘Europol activities will need in the future to be subject to **democratic accountability to the European Parliament** and to the Council, as well as to judicial control by the ECJ in accordance with the normal Treaty rules’.

**But notwithstanding the above-mentioned repeated appeals and specific proposals for strengthened democratic control and powers over Europol made by the EP, the Commission and by the Europol Director (and now also by the WG X of the Convention), the Council proposal for a Protocol to the Europol Convention on which the EP is consulted does not solve at all these issues.** The results of a comparison between the current powers of democratic control of the European Parliament (or of national parliaments) over Europol and the proposed reforms contained in the Protocol are **extremely disappointing**: the EP would only obtain the ‘privilege’ of being informed on the Joint Supervisory Body reports on data protection (new Article 24.6), on the Management Board reports on the past activities and planned future activities (new Article 28.10), and on the five years financial plan of Europol (new Article 35.4). It would be consulted (see new Article 34) on a series of decisions that are expressly mentioned – but on which the EP is normally consulted now in conformity with the current Treaty provisions on the Council duty to inform the EP on the main acts in justice and home affairs matters. A further provision expressly foresees the possibility for the Council President or for a representative to appear in front of the EP, possibly assisted by the Europol Director.

**The rapporteur notes that repeated requests and proposals for real, improved democratic control and powers on Europol have been ignored**, and the proposed changes are mainly aesthetic and make a mockery of the European Parliament and European citizens. **The Council has not followed EP requests for increased powers** over the Europol budget, in the appointment and dismissal procedures, for EP representatives participation in the Management Board, for learning from – and applying – higher standards and methods of democratic control taken from national practices. **Neither has it followed the Commission proposal for an EP/national parliaments joint committee, or Europol Director's view in favour of increased democratic control.**

Under these conditions, the EP will keep its current role with regard to Europol: discussing without anybody listening and making reports without anybody implementing. **The harsh**

**considerations by Mr Deprez for rejection of Council mugs' games are still and fully valid. Your rapporteur believes that the Council has to be made to realise that increased democratic control and powers on Europol are the only guarantee for its correct functioning and administration in everybody's interest: Europol, the EU institutions, and the citizens.**