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REPORT

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 staff
(5429/2005 – C6-0037/2005 – 2005/0803(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 Grand Duchy of Luxembourg with a view to adopting a Council decision adjusting the basic salaries and allowances applicable to Europol staff (5429/2005 – C6-0037/2005 – 2005/0803(CNS))

(Consultation procedure)

The European Parliament,

- having regard to the initiative of Grand Duchy of Luxembourg (5429/2005)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 (C6-0037/2005),
 - having regard to Rules 93 and 51 of its Rules of Procedure,
 - 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 the report of the Committee on Civil Liberties, Justice and Home Affairs (A6-0139/2005),
- 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 Grand Duchy of Luxembourg;
 2. Calls on the Grand Duchy of Luxembourg to withdraw its initiative;

¹ OJ C 51, 1.3.2005, p. 15.

² Texts Adopted, P5_TA(2002)0269.

³ OJ C 64 E, 12.3.2004, p. 588.

3. Instructs its President to forward its position to the Council and Commission and to the Government of the Grand Duchy of Luxembourg.

EXPLANATORY STATEMENT

The European Parliament has been consulted on the initiative presented by the Grand Duchy of Luxembourg with a view to adopting a Council Decision adjusting the basic salaries and allowances of Europol staff. Like his predecessors your rapporteur believes that this proposal needs to be assessed in the more general context of the latest developments concerning Europol, and in particular, checking whether the European Parliament's repeated requests on the requisite democratic control of Europol and on data protection and access to documents are being satisfied by the Council or not.

1. Europol: an EU security body lacking transparency and accountability

Last year, dealing with similar initiatives presented by Italy and Ireland, the rapporteur Mr. Turco presented an evaluation of a protocol amending the Europol Convention¹ and containing a series of amendments principally designed to increase Europol's powers and operating capacity, as well as certain rules concerning improved supply of information to the EP and consultation of that institution with regard to Europol's activities. The Parliament had made a series of requests - already set out, in part, in an earlier recommendation² - regarding various problematic aspects of Europol, on which it demanded urgent Council action, with specific reference to greater democratic, judicial and budgetary control over Europol.

The Parliament asked for:

- a single annual activities report to be forwarded to Council and Parliament; the formal right to hold an exchange of views with the Council presidency on the annual activities report; a formal right to ask the Director of Europol to appear before the appropriate parliamentary committee;
- the obligation for the joint supervisory body responsible for data protection to draw up an annual activities report, forward it to the EP and present it to the appropriate parliamentary committee;

The protocol only partially addressed these issues³ but it did not meet other expectations:

- reform of the Europol Management Board to ensure that over and above a representative of each Member State, it also contained two representatives from the Commission and Parliament respectively;

¹ Council Act of 27 November 2003 drawing up, on the basis of Article 43(1) of the Convention on the Establishment of a European Police Office (Europol Convention), a Protocol amending that Convention *Official Journal C 002*, 06/01/2004 P. 0001 - 0012

² EP Recommendation (Turco-Von Boetticher report) to the Council, 30 May 2002, P5-TAPROV(2002)0269.

³ New article 34 'Informing the European Parliament' (point 8.2 of the Protocol) states: 'The Presidency of the Council or its representative may appear before the European Parliament with a view to discuss general questions relating to Europol. The Presidency of the Council or its representative may be assisted by the Director of Europol. The Presidency of the Council or its representative shall, with respect to the European Parliament, take into account the obligations of discretion and confidentiality'.

- EP involvement on an equal basis with the Council in the Europol Director nomination and dismissal process.

The Europol convention, being of intergovernmental nature, makes no reference to information or involvement of the European Parliament (out of article 34) when dealing with budget (article 35), Europol annual report or work programme (article 28 paragraph 10).

In this context none of the following documents - of certain relevance and importance! - has been forwarded to the Parliament :

- Europol annual report for 2004;
- Europol work programme for 2006;
- Draft Europol budget for 2006.

This is clearly an unsatisfactory situation. How can there be, in the so-called Area of freedom, security and justice, such an imbalance between security goals and transparency requirements?

The only document received by our Committee is the second activity report of the Europol Joint Supervisory Body (November 2002-October 2004). Your rapporteur would like to emphasize that it is due only to the initiative of Mr Emilio Aced Feléz, Chairman of the JSB, and not to Council.

In its previous recommendations to the Council, the EP demanded that the latter adopt a provision guaranteeing a level of data protection and controls on the respect of such rules, equivalent to the level guaranteed in the first pillar (EP and Council Directive 95/46/EC), and the gathering of data concerning the development of organised crime, which should be included in the annual reports to be forwarded to the EP.

The problem of protecting privacy and personal data has become chronic in the third pillar, particularly regarding exchange of data (whether personal or not) with third countries (i.e. the United States) and with European institutions or bodies (such as the draft agreement between Europol and Eurojust).

The Commission has several times announced that it would present a legal act in this connection but without any concrete effect until now.

Your rapporteur welcomes the approach of the Joint Supervisory Body aimed at ‘examining all the agreements that Europol has drawn up with third states and bodies and scrutinising orders to open analysis files’ as well as its commitment to ‘ensure that data protection concerns are taken into account when new initiatives involving Europol are being drawn up’¹. This is of particular relevance insofar as the exchange of data between Europol and third countries is to increase in the context of the fight against international organised crime and terrorism. Such agreements should not reduce the level of protection of privacy for EU citizens.

¹ Second activity report of the Europol Joint Supervisory Body (November 2002-October 2004), p.25 and 27.

Some doubts could be cast on the Council action as regards Europol. The restrictive approach followed by Member States has led to give Europol a too limited initial mandate that since then, has to be enlarged so as to better fight and organised crime and terrorism. A number of protocols to the Europol convention have been adopted (the Parliament being only consulted) but most of them are not yet ratified, making Council decisions ineffective and, more important, reducing Europol efficiency and added-value. Much remains to be done as shown in the Hague Programme (Presidency Conclusions, 4-5 November 2004, paragraph 2.3 on Police cooperation :

‘The European Council urges the Member States to enable Europol in cooperation with Eurojust to play a key role in the fight against serious cross-border (organised) crime and terrorism by:

- ratifying and effectively implementing the necessary legal instruments by the end of 2004¹;
- providing all necessary high quality information to Europol in good time;
- encouraging good cooperation between their competent national authorities and Europol.’

In particular, several Member States have not yet ratified the protocol strengthening Europol’s operational support function with respect to national police authorities².

The Member States’ contradictory attitude is nothing less than astonishing. On the one hand, they maintain they wish to call on Europol for, among other things, operations involving national police services. On the other hand, however, they have not established an appropriate legal basis for Europol, even though Eurojust operates under Article 30 of the Treaty on European Union (this solution has been advocated by Parliament for years, and, since 2002, by the Council’s legal service).

2. The perspective of the Constitutional Treaty

The JSB activity report refers in diplomatic terms to the lack of democratic control: ‘There is also the wider issue of parliamentary scrutiny of Europol. In 2002 the Commission came to the conclusion that the existing controls in place to supervise the work of Europol - exercised by national parliaments, the European Parliament, national data protection authorities, the JSB and the Europol Management Board - were not ‘insufficient’. It was noted, however, that the indirect and fragmented nature of much of this control would suggest that ‘something clearer and more transparent is needed’. Such issues fall outside the remit of the JSB but it is clear

¹ Europol Protocols: the Protocol amending Article 2 and the Annex of the Europol Convention of 30 November 2000, OJ C 358, 13.12.2000, p. 1, the Protocol on the privileges and immunities of Europol, the members of its organs, its Deputy Directors and its members of 28 November 2002, OJ C 312, 16.12.2002, p.1 and the Protocol amending the Europol Convention of 27 November 2003, OJ C2, 6.1.2004, p.3. The Convention of 29 May 2000 on mutual assistance in criminal matters between the Member States, OJ C 197, 12.7.2000, p.1 and its accompanying Protocol of 16 October 2001, OJ C 326, 21.11.2001, p.2 and Framework Decision 2002/465/JHA of 13 June 2002 on Joint Investigation Teams, OJ L 162, 20.6.200, p. 1.

² TU Protocol amending the Europol Convention of 27 November 2003, OJ C2, 6.1.2004, p.3.

that as Europol's tasks become increasingly operational, control and scrutiny of Europol's work will have to adapt to take account of this'¹.

The draft Constitutional Treaty is expected to considerably improve the situation as shown in article III-276². It will then be possible for Parliament, in co-decision with the Council, to 'determine Europol's structure, operation, field of action and tasks' as well as 'lay down the procedures for scrutiny of Europol's activities by the European Parliament, together with national Parliaments.

Your rapporteur welcomes the recommendation of the Hague Programme. The Council should adopt the European law on Europol, provided for in Article III-276 of the Constitutional Treaty, as soon as possible after the entry into force of the Constitutional Treaty and no later than 1 January 2008, taking account of all tasks conferred upon to Europol.

In view of the entry into force of the Constitution, Council should at least adopt a more positive view and forward all relevant information to Parliament.

3. Conclusions

Europol is obviously a significant piece of the EU policy against international crime. This is why the Parliament supports its development while demanding its full integration in the EU system. The Constitutional Treaty will achieve it when enters into force.

Meanwhile Europol continues to operate without sufficient democratic control at both national and European levels. For this reason, and in keeping with the Parliament's established practice, your rapporteur proposes that we reject the initiative on which the Parliament is being consulted here.

¹ Ibid, p.26.

² Article III-276 reads:

'1. Europol's mission shall be to support and strengthen action by the Member States' police authorities and other law enforcement services and their mutual cooperation in preventing and combating serious crime affecting two or more Member States, terrorism and forms of crime which affect a common interest covered by a Union policy.

2. European laws shall determine Europol's structure, operation, field of action and tasks. These tasks may include:

(a) the collection, storage, processing, analysis and exchange of information forwarded particularly by the authorities of the Member States or third countries or bodies;

(b) the coordination, organisation and implementation of investigative and operational action carried out jointly with the Member States' competent authorities or in the context of joint investigative teams, where appropriate in liaison with Eurojust.

European laws shall also lay down the procedures for scrutiny of Europol's activities by the European Parliament, together with national Parliaments.

3. Any operational action by Europol must be carried out in liaison and in agreement with the authorities of the Member State or States whose territory is concerned. The application of coercive measures shall be the exclusive responsibility of the competent national authorities.'

PROCEDURE

Title	Initiative by the Grand Duchy of Luxembourg with a view to adopting a Council decision adjusting the basic salaries and allowances applicable to Europol staff	
References	5429/2005 - C6-0037/2005 - 2005/0803(CNS)	
Legal basis	Article 39(1) EU	
Basis in Rules of Procedure	Rules 93 and 51	
Committee responsible Date authorisation announced in plenary	LIBE 22.2.2005	
Committee(s) asked for opinion(s) Date announced in plenary	BUDG 22.2.2005	
Not delivering opinion(s) Date of decision	BUDG 20.4.2005	
Enhanced cooperation Date announced in plenary		
Rapporteur(s) Date appointed	Claude Moraes 21.2.2005	
Previous rapporteur(s)		
Discussed in committee	26.4.2005	
Date adopted	26.4.2005	
Result of final vote	for: 26 against: 0 abstentions: 0	
Members present for the final vote	Edit Bauer, Mihael Brejc, Maria Carlshamre, Michael Cashman, Giusto Catania, Charlotte Cederschiöld, Fausto Correia, Rosa Díez González, Antoine Duquesne, Kinga Gál, Elly de Groen-Kouwenhoven, Ewa Klamt, Barbara Kudrycka, Henrik Lax, Edith Mastenbroek, Cristobal Claude Moraes, Martine Roure, Inger Segelström, Manfred Weber, Tatjana Ždanoka	
Substitutes present for the final vote	Jeanine Hennis-Plasschaert, Sophia in 't Veld, Antonio Masip Hidalgo, Vincent Peillon, Herbert Reul, Marie-Line Reynaud	
Substitutes under Rule 178(2) present for the final vote		
Date tabled – A6	10.5.2005	A6-0139/2005