EVROPSKÝ PARLAMENT

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KONEČNÉ ZNĚNÍ
A6-0139/2005

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ZPRÁVA

o podnětu Lucemburského velkovévodství k přijetí rozhodnutí Rady, kterým se upravují základní platy a příspěvky pro zaměstnance Europolu
(5429/2005 – C6-0037/2005 – 2005/0803(CNS))

Výbor pro občanské svobody, spravedlnost a vnitřní věci

Zpravodaj: Claude Moraes

Vysvětlivky k označení legislativních postupů

*	Postup konzultace *většina odevzdaných hlasů*
**I	Postup spolupráce (první čtení) *většina odevzdaných hlasů*
**II	Postup spolupráce (druhé čtení) *většina odevzdaných hlasů pro schválení společného postoje* *většina hlasů poslanců Parlamentu pro zamítnutí nebo změnu společného postoje*
***	Postup souhlasu *většina hlasů poslanců Parlamentu s výjimkou případů uvedených v článcích 105, 107, 161 a 300 Smlouvy o ES a článku 7 Smlouvy o EU*
***I	Postup spolurozhodování (první čtení) *většina odevzdaných hlasů*
***II	Postup spolurozhodování (druhé čtení) *většina odevzdaných hlasů pro schválení společného postoje* *většina hlasů poslanců Parlamentu pro zamítnutí nebo změnu společného postoje*
***III	Postup spolurozhodování (třetí čtení) *většina odevzdaných hlasů pro schválení společného návrhu*

(Druh postupu závisí na právním základu navrženém Komisí.)

Pozměňovací návrhy k legislativnímu textu

V pozměňovacích návrzích Parlamentu je pozměněný text zvýrazněn ***tučnou kurzívou***. Zvýraznění normální kurzívou označuje části legislativního textu, u nichž je navržena oprava, a má sloužit k usnadnění vypracování konečného znění (např. zjevné chyby nebo vynechání textu v některé jazykové verzi). Tyto navržené opravy podléhají dohodě příslušných oddělení.

OBSAH

Strana

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NÁVRH LEGISLATIVNÍHO USNESENÍ EVROPSKÉHO PARLAMENTU

o podnětu Lucemburského velkovévodství k přijetí rozhodnutí Rady, kterým se upravují základní platy a příspěvky pro zaměstnance Europolu (5429/2005 – C6-0037/2005 – 2005/0803(CNS))

(Postup konzultace)

Evropský parlament,

– s ohledem na podnět Lucemburského velkovévodství (5429/2005)[1],

– s ohledem na článek 44 aktu Rady ze dne 3. prosince 1998, kterým se stanoví služební řád úředníků pro zaměstnance Europolu (dále jen „služební řád“),

– s ohledem na čl. 39 odst. 1 Smlouvy o EU, podle kterého Rada konzultovala s Parlamentem (C6-0037/2005),

– s ohledem na články 93 a 51 jednacího řádu,

– s ohledem na sdělení Komise Evropskému parlamentu a Radě - Demokratický dohled nad Europolem (KOM(2002)0095),

– s ohledem na své doporučení Radě ze dne 30. května 2002 o budoucím směřování Europolu a jeho automatickém začlenění do systému institucí Evropské unie[2],

– s ohledem na své doporučení Radě ze dne 10. dubna 2003 o budoucím směřování Europolu[3],

– s ohledem na zprávu Výboru pro občanské svobody, spravedlnost a vnitřní věci (A6-0139/2005),

A. vzhledem k tomu, že žádná provozní a organizační opatření týkající se Europolu ani současná činnost Europolu a budoucí programy na základě potřeb Evropské unie a členských států nebyly s Parlamentem konzultovány a ani o nich nebyl informován; že nedostatek informací neumožňuje Parlamentu posoudit relevantnost a přiměřenost navrženého rozhodnutí;

1. zamítá podnět Lucemburského velkovévodství;

2. vyzývá Lucemburské velkovévodství, aby vzalo svůj podnět zpět;

3. pověřuje svého předsedu, aby předal postoj Parlamentu Radě, Komisi a vládě Lucemburského velkovévodství.

[1] Úř. věst. C 51, 1.3.2005, s. 15.
[2] Přijaté texty, P5_TA(2002)0269.
[3] Úř. věst. C 64 E, 12.3.2004, s. 588.

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 Convention[4] 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 recommendation[5] - 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 did only partially addressed these issues[6] 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;
- EP involvement on an equal basis with the Council in the Europol Director nomination and dismissal process.

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[4] 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*

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

[6] 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'.

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 (ie 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"[7]. 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.

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

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

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 2004[8];
- 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 authorities[9].

On ne peut que s'étonner de l'attitude contradictoire des Etats Membres qui, d'une part, déclarent vouloir recourir à Europol, y compris pour des tâches opérationnelles en coopération avec les polices nationales, et, d'autre part, ne lui donnent pas une base juridique adéquate comme dans le cas d'Eurojust au titre de l'article 30 du TUE (comme cela avait été suggéré depuis des années par le Parlement et depuis 2002 par le Service juridique du Conseil).

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 that as Europol's tasks become increasingly operational, control and scrutiny of Europol's work will have to adapt to take account of this"[10].

The draft Constitutional Treaty is expected to considerably improve the situation as shown in

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[8] 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.

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

[10] Ibid, p.26.

article III-276[11]. 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 that 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.

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[11] 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."

POSTUP

Název	Podnět Lucemburského velkovévodství k přijetí rozhodnutí Rady, kterým se upravují základní platy a příspěvky pro zaměstnance Europolu
Referenční údaje	5429/2005 - C6-0037/2005 - 2005/0803(CNS)
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Příslušný výbor Datum, kdy bylo na zasedání oznámeno udělení svolení	LIBE 22.2.2005
Výbor požádaný o stanovisko Datum oznámení na zasedání	BUDG 22.2.2005
Nezaujaté stanovisko Datum rozhodnutí	BUDG 20.4.2005
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Předchozí zpravodaj	
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Výsledek závěrečného hlasování	pro: 26 proti: 0 zdrželi se: 0
Členové přítomní při závěrečném hlasování	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
Náhradníci přítomní při závěrečném hlasování	Jeanine Hennis-Plasschaert, Sophia in 't Veld, Antonio Masip Hidalgo, Vincent Peillon, Herbert Reul, Marie-Line Reynaud
Náhradníci (čl. 178 odst. 2) přítomní při závěrečném hlasování	
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