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**COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN
PARLIAMENT AND THE COUNCIL**

**on the procedures for the scrutiny of Europol's activities by the European Parliament,
together with national Parliaments**

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1. INTRODUCTION: THE ISSUE OF - PARLIAMENTARY SCRUTINY OF EUROPOL

Europol's founding act is the Council Decision of 6 April 2009¹. It repeals the previous legal framework, a Convention which entered into force in 1998² and was amended in 2007 by the entry into force of three Protocols.³

The aim of the Council Decision was first and foremost to replace Europol's legal basis by an instrument which would be more flexible than an international agreement. Secondly, the Council Decision replaced intergovernmental funding by a subsidy drawn from the budget of the Union, thus conferring upon Europol the status of EU agency. The essence of the organization — a European law-enforcement support centre for the collection, exchange and analysis of information on cross-border forms of crime affecting two or more Member States — was not altered by the Decision, although Europol's mandate was extended from 'organized' to 'serious' crime. Other changes were introduced, but these do not affect the fundamental nature of Europol's mission, which remains a law enforcement support centre without coercive powers.

The Council Decision entered into application on 1 January 2010, one month after the entry into force of the Treaty on the Functioning of the European Union (hereinafter TFEU).

Article 88 of the TFEU provides for a new legal regime for Europol. It stipulates that Europol shall be governed by (a) regulation(s), to be adopted in accordance with the ordinary legislative procedure, i.e. by co-decision. One aspect of the future European Parliament and Council regulation(s), which will lay down, *inter alia*, Europol's structure and tasks, relates to the procedures for the scrutiny of Europol's activities by the European Parliament together with national Parliaments. The Stockholm Programme⁴ calls on the Commission to produce a reflection document on these procedures.

Europol's future legal framework is the subject of an ongoing reflection, led by the Commission, involving all key institutions and stakeholders, in particular the European Parliament and Council representatives. In the course of this reflection, the institutions will be invited to make concrete proposals as to how mechanisms of parliamentary scrutiny can be put in place and efficiently implemented in practice in line with Article 88 of the TFEU.

Over the last decade, the European Parliament (hereinafter EP), and in particular its Committee on Civil Liberties and Justice and Home Affairs, has issued several resolutions and other reflection documents on the subject of democratic scrutiny.

¹ Council Decision 2009/371/JHA of 6 April 2009 establishing the European Police Office (OJ L 121/37, 15.05.2009) (the "Council Decision").

² OJ C 316, 27.11.1995, p.1.

³ 1. The Protocol drawn up on the basis of Article 43(1) of the Europol Convention amending Article 2 and the Annex to that Convention — (the 'Money Laundering Protocol'), OJ C 358, 13.12.2000, p. 2.

2. The Protocol amending the Europol Convention and the Protocol on the privileges and immunities of Europol, the members of its organs, the deputy directors and the employees of Europol — (the 'JIT Protocol'), OJ C 312, 16.12.2002, p. 2.

3. The Protocol drawn up on the basis of Article 43(1) of the Europol Convention amending that Convention — (the 'Danish Protocol'), OJ C 002, 06.01.2004 p. 3.

⁴ The Stockholm Programme — An open and secure Europe serving and protecting citizens, OJ C 115, 4.5.2010, p.1.

In addition, in 2001 the Swedish Presidency presented a detailed inventory of existing legal provisions on parliamentary controls along with proposals to extend the role of the EP in matters related to Europol⁵.

These contributions took as their reference the provisions of the Europol Convention, as well as the proposals for Council acts drawing up the abovementioned three Protocols amending the Convention. Further more, this Communication will consider the position that the EP expressed on the proposal for a Council Decision establishing Europol.

Europol is the first European body operating in the field of police cooperation. At the time this debate began⁶, this was an area largely dominated by intergovernmental decision-making, on the sidelines of the Community legal order, where the EP had very limited powers. Initially (according to the original Convention), parliamentary supervision was limited to the forwarding, by the Council Presidency, of an annual special report on Europol's activities and to consultation in the event of amendments to the Convention. It was felt that Europol's involvement in police activities and its key role in the exchange of information among national law-enforcement services required parliamentary oversight of a sort that went beyond the provisions foreseen in the Convention. The processing of information, including personal data — Europol's core business — has the potential to impact on the fundamental rights of individuals, in particular the right to the protection of their personal data. A more robust parliamentary control system was seen as the means to enhance democratic legitimacy in this area.

This Communication takes stock of reflections and opinions expressed in the past about parliamentary supervision of Europol and explains the controls over the organization's activities currently in place. On that basis, the Communication draws conclusions and formulates recommendations which are designed to inform future discussions. Among the proposals put forward, some can be implemented within the existing framework of Europol's legal basis. Others will need further reflection and could be considered in a new Proposal for a Regulation on Europol, including a change of legal basis in line with Article 88 TFEU, which the Commission intends to present by 2013, after an evaluation of the current Council Decision and an impact assessment have been carried out.

2. PARLIAMENTARY SCRUTINY OF EUROPOL'S ACTIVITIES IN THE CURRENT FRAMEWORK

The Council Decision establishing Europol introduces new powers for the EP. In fact, it radically alters the terms of the relationship between Europol and the EP. By incorporating Europol within the EU legal framework, the EP is now directly involved in steering the activities of the newly created agency, in particular in its capacity as a branch of the budgetary authority.

⁵ See Council document 8677/01 Europol 39, Note from the Swedish Presidency to the Article 36 Committee, Democratic control over Europol.

⁶ The discussions preceding the adoption of the Europol Convention started the debate on democratic scrutiny. While supporting the creation of Europol, the rapporteur Hartmut Nassauer called for a revision of the Convention to increase parliamentary scrutiny. (Summary of debate in plenary 14 March 1996 — procedure file-reference: INI/1994/2221).

2.1. European Parliament

Budgetary procedure

In terms of parliamentary influence, the most notable innovation in the Council Decision establishing Europol is linked to Europol's change of status from intergovernmental body to EU agency, which entails direct funding from the Union budget. It also means that Europol is subject to the EU's Financial Regulations. In its capacity as a branch of the budgetary authority, the EP can have a direct impact on the activities of the new agency⁷.

Furthermore, the EP is responsible for the control of the budget⁸. Taking into account a recommendation from the Council, the EP gives a discharge to the Director regarding the budget implementation. Europol is also obliged to submit to the EP, at the latter's request, any information required for the smooth application of the discharge procedure for the financial year in question.

Direct exchanges with the European Parliament

A new provision in the Decision opens the way for regular and formal exchanges between the EP and Europol, giving the EP the right to request at any time that the Presidency of the Council, the Chairperson of the Management Board and the Director appear before the EP to discuss matters relating to Europol, taking into account the obligations of discretion and confidentiality⁹. Significantly, there is now an obligation to abide by the EP's request. This, too, is an important innovation, in that the provision enables the EP to question the Director independently. Such a strong obligation ('shall') is an important innovation in the Justice and Home Affairs (hereinafter JHA) area.

Consultation on implementing measures

The EP is to be consulted on any implementing measure of the current legal basis which takes the form of a Council decision.

The Council Decision contains a number of provisions regarding the information to be made available to the EP. These constitute an improvement over what the so-called Danish Protocol of 2003 introduced into the Convention:

Information to the EP via the Council

The Council endorses and forwards on an annual basis the following documents¹⁰ to the EP for its information:

- the draft estimate of revenue and expenditure, the draft establishment plan and the final budget;
- the work programme for Europol's future activities¹¹;
- the general report on Europol's activities during the previous year.

⁷ Article 42(1) Council Decision.

⁸ Article 43(6), (9). and (10) Council Decision.

⁹ Article 48 Council Decision.

¹⁰ Article 37(10) Council Decision.

¹¹ In addition, Article 27(4)(a) of Commission Regulation (EC, Euratom) No 652/2008 of 9 July 2008 amending Regulation (EC, Euratom) No 2343/2002 on the framework Financial Regulation for the bodies referred to in Article 185 of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities (OJ L 181/23, 10 July 2008, p. 23-34) as amended by Commission Regulation No 652/2008 of 9 July 2008 requires Europol to 'send to the Commission and the budgetary authority by 31 March each year at the latest its draft work programme'.

*Information to the EP via the Joint Supervisory Body*¹²

The Joint Supervisory Body forwards its activity reports, which are drawn up at regular intervals, not only to the Council but also to the EP¹³.

2.2. National Parliaments

National Parliaments' supervision of Europol's activities is exercised through their control over their respective governments, in accordance with the constitutional rules of each Member State.

Responsibility for guiding and supervising Europol lies with its Management Board. This Board, which is composed of representatives of Member States, reports in turn to the Council. The Council members concerned with Europol-matters, i.e. the Interior or Justice Ministers, are subject to national parliamentary controls.

Each of these Ministers is responsible for providing adequate information on the functioning of Europol to his/her national Parliament, where he/she can be held accountable for the Ministry's policy regarding Europol. Europol is therefore already scrutinized by national Parliaments.

As indicated in section 3.2 below, the preparatory report by the Conference of Parliamentary Committees for Union Affairs (hereinafter COSAC) Secretariat for the 41st COSAC-conference describes current practices relevant to parliamentary scrutiny of Europol¹⁴.

Situations vary. The control exercised by some national assemblies is confined to a document-based *ad hoc* scrutiny of Europol when they discuss acts, e.g. a proposal modifying Europol's competences. For instance, the Council Decision establishing the European police office was a matter for *ex-ante* scrutiny in national Parliaments¹⁵.

Other Parliaments use their right to hold their governments to account in EU matters as a means of obtaining information about Europol at any given moment (the Belgian *Chambre des Représentants*, the French *Sénat*). Other practices include direct relations between the Parliaments and their country's national representative on the Europol Management Board or annual discussions on reports on Europol.

In the case of Denmark and Ireland, the respective governments need to seek parliamentary approval prior to agreeing, in the Council, to their countries' participation in measures in the area of Justice and Home Affairs. Both Parliaments discuss Europol-matters if the point is on the agenda of a JHA Council meeting. Thus, these Parliaments can still exercise a direct influence on decisions relating to Europol.

As regards the possibilities of inter-parliamentary cooperation in the future, the report noted: 'National Parliaments currently scrutinise Europol within their systems of general scrutiny of

¹² Europol's independent and external data protection monitoring authority.

¹³ Article 34(6) Council Decision.

¹⁴ Eleventh Bi-annual Report: Developments in the European Union — procedures and practices relevant to parliamentary scrutiny, prepared by the COSAC-Secretariat and presented to the XLI Conference of Community and European Affairs Committees of Parliaments of the European Union, 11-12 May 2009, Prague, www.cosac.eu.

¹⁵ For example, in the process preceding the adoption of the Council Decision, this resulted in a reservation by the Parliament of the Czech Republic, which adopted a resolution stressing the need for the proposed measures to fulfil the requirements of proportionality. The Committee on Constitutional and Legal Affairs Committee recommended that the government approve the proposal provided certain conditions were met.

Justice and Home Affairs. In some cases this involves the Committees on EU Affairs, in other cases the specialised committees, or a combination of both.’

3. THE DEBATE ON THE PARLIAMENTARY SCRUTINY OF EUROPOL

The current framework for parliamentary scrutiny of Europol, as set out in Section 2, reflects the historic developments over the last decade in the debate on the supervision of Europol. This Communication also specifically takes into account opinions which have been expressed in the past with a view to achieving an appropriate system of parliamentary scrutiny of Europol.

3.1. The Position of the European Parliament

► The EP’s past views and *desiderata* on the subject can be broadly summarized as follows¹⁶:

Inclusion within Community law and funding by the EC budget

The EP repeatedly asked that Europol be governed by Community law, particularly, but not necessarily, if it were to acquire cross-border operational powers. The EP also proposed to incorporate Europol’s budget within the Community budget. Given the very lengthy and cumbersome procedure for amending the Convention, the EP insisted on it being replaced by a Council Decision.

¹⁶

a) Resolution on Europol adopted on 14 March 1996, A4-0061/96 based on the report by Hartmut Nassauer, Committee on Civil Liberties and Internal Affairs — *hereinafter the 1996 Resolution*.

b) Recommendation to the Council on Europol: reinforcing parliamentary controls and extending powers; A4-0064/1999, non-legislative resolution adopted on 13 April 1999, based on a proposal for a recommendation on Europol: reinforcing parliamentary controls and extending powers, Committee on Civil Liberties and Internal Affairs, Rapporteur: Hartmut Nassauer, 23 February 1999, A4-0064/99 — *hereinafter the 1999 Recommendation*.

c) Resolution on the ‘Portuguese initiative’ of the European Parliament, A5-0312/2000, adopted on 14 November 2000, based on the report by Rapporteur Anna Karamanou, Committee on Civil Liberties and Internal Affairs — *hereinafter the 2000 Resolution*.

d) ‘Belgian-Swedish Initiative’ - Resolution including amendments by the European Parliament adopted on 13 November 2001 based on the report on the initiative of the Kingdom of Belgium and the Kingdom of Sweden with a view to adopting a Council Act drawing up a Protocol amending the Convention on the establishment of a European Police Office (Europol Convention), etc., Committee on Civil Liberties, Justice and Home Affairs, Rapporteur: Maurizio Turco, 24 October 2001, FINAL A5-0370/2001 — *hereinafter 2001 Resolution*.

e) ‘Belgian-Spanish Initiative’ – Non-legislative resolution adopted on 30 May 2002 (P5-TA(2002)0269 based on the report on the initiative of the Kingdom of Belgium and the Kingdom of Spain with a view to adopting a Council Act drawing up a Protocol amending the Convention on the establishment of a European Police Office (Europol Convention) etc. and Recommendation of the European Parliament to the Council on the future development of Europol and its automatic incorporation into the institutional system of the European Union, Committee on Civil Liberties, Justice and Home Affairs, Rapporteur: Gérard M.J. Deprez, 16 May 2002, FINAL A5-0173/2002 — *hereinafter the 2002 Recommendation*.

f) Recommendation to the Council on the future development of Europol (2003/2070 (INI) — Non-legislative resolution adopted on 10 April 2003 (P5_TA(2003)0186, based on the report by Co-Rapporteurs: Christian Ulrik von Boetticher, Maurizio Turco, 7 April 2003 A5-0116/2003 — *hereinafter the 2003 Recommendation*.

g) Legislative resolution of 17 January 2008 on the proposal for a Council decision establishing the European Police Office (EUROPOL), P6_TA (2008)0015 based on the report on the establishment of the European Police Office (Europol), Committee on Civil Liberties, Justice and Home Affairs, Rapporteur: Agustín Díaz de Mera García Consuegra, 15.11.2007 A6-0447/2007 — *hereinafter the 2008 Resolution*.

Informing and consulting the European Parliament

The provision of (mere) information in an annual special report on Europol's work was considered to be insufficient.

The EP asked to be informed regularly (on a quarterly basis) about Europol activities. Furthermore, it urged the Council to take account of the right enshrined in the former Treaty on European Union to be informed and consulted. In particular, it expected to be consulted on a whole range of matters relating to the functioning of Europol and asked for its opinion to be duly taken into account.

In 2001, the EP expressed the wish to be consulted on the definition of Europol's prioritised areas of action.

Strengthening of national and European parliamentary control procedures

Existing arrangements for national parliamentary controls were described as cumbersome and ineffective because of Europol's intergovernmental nature. The EP called on the Council to incorporate, within a future EU Treaty, provisions on full parliamentary scrutiny of Europol at the European level. In 2001, the EP asked the Commission to present a proposal for revising the Europol Convention to align it with the higher standards of democratic control of the police forces of the Member States.

Anticipating the adoption of a Council Decision, there was a call for scrutiny procedures of Europol by national Parliaments and by the EP which should no be less stringent than those applied to amendments to the Convention (ratification process). Member States were invited to discuss how their national Parliaments could be involved in the adoption of any amendments to the Europol Council Decision¹⁷.

Inter-parliamentary coordination and exercise by national Parliaments of existing rights

National Parliaments were urged to take consistent account of their right and duty to supervise the actions of both their national Council member responsible for Europol and the Member States' representatives appointed to the body's Management Board. This should take place in close cooperation with the EP.

Extending Europol's powers

In its 1996 Resolution, the EP had called for a future review of the Europol Convention to assess the possibility of assigning investigative powers to Europol, within the scope of its mandate. Furthermore, the EP favoured the granting of operational (this is interpreted as meaning 'coercive') powers to Europol 'if it is subject to the instructions of the European Commission and with such a European Police Office being made accountable to the European Parliament as well as to the national Parliaments.'¹⁸

Later, the EP called on the Council not to confer any cross-border operational powers to Europol without providing for an adequate scrutiny mechanism based on Community law and involving the EP. In 2007, the EP reiterated that the granting of appropriate operational powers and the improvement of democratic control were intrinsically linked.

► A number of concrete suggestions were also put forward:

¹⁷ Working document on the establishment of the European Police Office (Europol) preceding the 2008 Resolution, Committee on Civil Liberties, Justice and Home Affairs, Rapporteur: Agustín Díaz de Mera García Consuegra, 19 February 2007 PE 384.589v01-00.

¹⁸ Point 15 of the 1996 Resolution.

Role of an inter-parliamentary committee

The Presidency of the Council, or its representative, should be required to appear before any joint committee which may be set up by the EP in cooperation with national Parliaments, with a view to discussing questions relating to Europol.

Increased transparency by improved provision of information

Suggestions included the right to request an exchange of views with the Director or the Council Presidency on the basis of the special annual report and the report on data protection. A proposal was also made to introduce a formal right to invite the Europol Director before the competent Parliamentary Committee or for the Director to appear at his or her own initiative.

Involvement in the appointment and dismissal procedures of the Director

The EP would be involved, together with the Council, in the appointment and dismissal procedures for the Director and Deputy Directors¹⁹. According to the 1996 resolution, the views of the EP should 'be duly taken into consideration'.

European Parliament representatives on the Europol Management Board

In addition to one representative of each Member State, two representatives of the Commission and two representatives of the EP would be members, each with one vote²⁰.

It is important to note that the Third Protocol to the Europol Convention, which entered into force in April 2007, introduced a few improvements in respect of the EP's right of information and consultation. In particular, the EP was to be consulted by the Council on the adoption of a series of measures pertaining to different aspects of Europol's operation²¹. In addition, the possibility was introduced for the Council Presidency, with or without the assistance of the Europol Director, to appear before the EP to discuss general questions relating to Europol.²²

In other words, at least some of the concerns expressed by the EP in the early years of Europol's activity were addressed through these amendments to the original Convention.

► Having been consulted on the Commission proposal for a Council Decision establishing Europol, the EP set out its opinion in the legislative resolution of 17 January 2008.²³

In tabling the proposal, the Commission had taken on board some of the most important recommendations previously made by the EP. The Council Decision embeds Europol in the EU institutional framework in terms of legal basis and funding. This placing of the organization on a Community footing increases the opportunities for parliamentary control, through the EP's involvement in the procedure for the adoption of implementing decisions by means of the mandatory consultation of the EP and, more importantly, through its fundamental role in the adoption of the budget, including the establishment plan, as well as in the discharge procedure.

¹⁹ a) Point 11 of the 1996 Resolution.
b) Amendment 8 in the 2000 Resolution.
c) Recommendation 4 of the 2002 Recommendation.
d) Recommendation 4 of the 2003 Recommendation.

²⁰ a) Amendment 7 in the 2000 Resolution.
b) Recommendation 4 of the 2002 Recommendation.
c) Recommendation 4 of the 2003 Recommendation.

²¹ Article 34 paragraph 1 of the Convention.

²² Article 34 paragraph 2 of the Convention.

²³ 2008 Resolution.

Significantly, the request to introduce the obligation for the Presidency of the Council, the Chairperson of the Management Board and the Director to appear before the EP at its request ‘to discuss matters relating to Europol’ was also eventually incorporated in the text of the Council Decision²⁴.

Out of the 55 amendments tabled by the EP on different aspects of the proposed Decision, there emerged three main clusters of suggestions concerning improved democratic accountability and governance:

Strengthening parliamentary control, in particular through an inter-parliamentary committee

Noting that some improvements to Europol’s democratic accountability were still required following the extension of Europol’s operational powers, the EP asked for Europol’s priorities for the coming year to be presented by the Chairman of the Management Board or the Director of Europol ‘before a joint committee comprising members of the EP and members of national Parliaments in order to guarantee a democratic debate with civil society and better control over its activities’.²⁵

If (1) the draft budget estimate, the preliminary draft budget including the establishment plan, and the final budget, (2) a work programme for Europol’s future activities and (3) a general report on Europol’s activities are submitted to the EP, ‘which shall have the opportunity to examine them as appropriate, where necessary in association with national Parliaments’²⁶, early involvement at the planning stage is possible.

The transmission of the annual draft planning documents to the EP only (not to national Parliaments) was accepted, but just for information purposes and not for consultation. This gives the EP a decisive influence in the context of the budgetary procedure.

The idea of an obligation to appear before inter-parliamentary committee was not taken up by the Council, and was therefore not reflected in the text of the Decision. Furthermore, such a Committee was not set up by the EP together with national Parliaments.

Involvement in the procedures for appointing the Director

The EP would be entitled to put questions to the candidates, give an opinion and state an order of preference. The Management Board would have to take those opinions into account when appointing the Director. This proposal was not taken up.

More stringent data protection provisions

The EP attaches considerable importance to reinforcing data protection provisions to introduce additional safeguards. This includes taking account of ‘the level of respect for human rights, democracy and the rule of law’²⁷ in Europol’s relations with third countries.

The idea of directly involving the EP in data protection processes was not followed up.

3.2. The views of the national Parliaments

► National Parliaments have mainly used the COSAC forum to enunciate their agenda regarding national parliamentary control of Europol.

²⁴ Article 48 of the Europol Council Decision.

²⁵ Amendment 50.

²⁶ Amendment 39.

²⁷ Amendment 58.