



EUROPEAN COMMISSION

Brussels, 17.12.2010  
COM(2010) 776 final

**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**

## TABLE OF CONTENTS

1.	Introduction: The issue of - parliamentary scrutiny of Europol.....	3
2.	Parliamentary scrutiny of Europol’s activities in the current framework .....	4
2.1.	European Parliament .....	5
2.2.	National Parliaments .....	6
3.	The debate on the parliamentary scrutiny of Europol.....	7
3.1.	The Position of the European Parliament.....	7
3.2.	The views of the national Parliaments .....	10
4.	Outlook for the future: Europol in the new institutional framework .....	12
4.1.	The issue of the attribution of coercive powers — Article 88(3) TFEU .....	12
4.2.	Role of national Parliaments under the Treaty of Lisbon .....	13
5.	Conclusion and recommendations .....	13
5.1.	Setting up of a permanent joint or interparliamentary forum .....	15
5.2.	Increased transparency: a new communication strategy with the EP and national Parliaments.....	15
5.3.	Separating roles.....	16

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

Europol's founding act is the Council Decision of 6 April 2009<sup>1</sup>. It repeals the previous legal framework, a Convention which entered into force in 1998<sup>2</sup> and was amended in 2007 by the entry into force of three Protocols.<sup>3</sup>

The aim of the Council Decision was first and foremost to replace Europol's legal basis by a 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 Programme<sup>4</sup> 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.

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

<sup>2</sup> OJ C 316, 27.11.1995, p.1.

<sup>3</sup> 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.

<sup>4</sup> 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 Europol<sup>5</sup>.

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 began<sup>6</sup>, 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.

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

<sup>6</sup> 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 agency<sup>7</sup>.

Furthermore, the EP is responsible for the control of the budget<sup>8</sup>. 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 confidentiality<sup>9</sup>. 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 documents<sup>10</sup> 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 activities<sup>11</sup>;
- the general report on Europol's activities during the previous year.

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<sup>7</sup> Article 42(1) Council Decision.

<sup>8</sup> Article 43(6), (9). and (10) Council Decision.

<sup>9</sup> Article 48 Council Decision.

<sup>10</sup> Article 37(10) Council Decision.

<sup>11</sup> 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*<sup>12</sup>

The Joint Supervisory Body forwards its activity reports, which are drawn up at regular intervals, not only to the Council but also to the EP<sup>13</sup>.

### **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 41<sup>st</sup> COSAC-conference describes current practices relevant to parliamentary scrutiny of Europol<sup>14</sup>.

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 Parliaments<sup>15</sup>.

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

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<sup>12</sup> Europol's independent and external data protection monitoring authority.

<sup>13</sup> Article 34(6) Council Decision.

<sup>14</sup> 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](http://www.cosac.eu).

<sup>15</sup> 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 follows<sup>16</sup>:

##### *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.

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<sup>16</sup> 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: Agustin 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 Decision<sup>17</sup>.

### *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.'<sup>18</sup>

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:

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<sup>17</sup> 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.

<sup>18</sup> 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 Directors<sup>19</sup>. 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 vote<sup>20</sup>.

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 operation<sup>21</sup>. 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.<sup>22</sup>

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.<sup>23</sup>

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.

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<sup>19</sup> 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.

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

<sup>21</sup> Article 34 paragraph 1 of the Convention.

<sup>22</sup> Article 34 paragraph 2 of the Convention.

<sup>23</sup> 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 Decision<sup>24</sup>.

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’.<sup>25</sup>

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’<sup>26</sup>, 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’<sup>27</sup> 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.

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<sup>24</sup> Article 48 of the Europol Council Decision.

<sup>25</sup> Amendment 50.

<sup>26</sup> Amendment 39.

<sup>27</sup> Amendment 58.

COSAC called for concerted parliamentary oversight of Europol by the EP and the national Parliaments. This forum did not spell out how well-functioning procedures could be established, but called for the consultation and involvement of national Parliaments in the discussion process on the implementation of democratic scrutiny<sup>28</sup>.

However, in 2009, in preparation for its 41<sup>st</sup> conference, the COSAC-Secretariat compiled an interesting report based on a questionnaire sent out to all EU Parliaments. Since one part of the report deals with the issue of parliamentary oversight of Europol, it gives an overview of the situation at national level as well as the suggestions from national Parliaments<sup>29</sup>.

*Proposals for putting into practice the parliamentary cooperation provided for in Article. 88 TFEU*<sup>30</sup>.

A considerable number of Parliaments expressed the view that either Joint Committee Meetings (JCM) or Joint Parliamentary Meetings (JPM) should be considered as instruments for achieving efficient cooperation between Parliaments. As regards their composition, suggestions ranged from the use of existing inter-parliamentary meetings, the creation of a specific mixed committee composed of members of national Parliaments and the EP, to enhancing the role of the existing COSAC. A combination of all the above was also considered as a possibility.

The report contains a wide range of views on the potential role of COSAC in scrutinising Europol's activities. A number of Parliaments stated that COSAC could serve as a forum for discussing, sharing ideas and exchanging information as well as best practices on the issue of democratic scrutiny of Europol. Some Parliaments suggested that the Director of Europol should be invited to participate in these discussions to provide information on a regular basis on the activities of Europol and that the scrutiny of Europol's activities should be a regular point on the agenda at COSAC meetings. However, other national assemblies, backed by the EP, were concerned that these items would not fit COSAC's current role and were rather a matter for a specialised committee of the EP.

*Improving parliamentary scrutiny at national level after the entry into force of the Treaty of Lisbon*<sup>31</sup>

Most Parliaments do not seem to have discussed this issue in depth and only a very few concrete changes were mentioned. Some, however, had already defined in detail their future involvement, e.g. setting up of a specific administrative task force, meetings with competent Parliamentarians and government representatives and an evaluation of the current scrutiny system.

► The specific issue of democratic control over Europol was also debated at a dedicated interparliamentary conference on Parliamentary Control of Europol in 2001 in The Hague.

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<sup>28</sup> Latest contributions: Contribution of the XLIV COSAC, Brussels, 24 -26 October 2010, Contribution of the XLII COSAC, Stockholm, 4-6 October 2009 and Contribution of the XLI COSAC, Prague, 10-12 May 2009 [www.cosac.eu](http://www.cosac.eu).

<sup>29</sup> 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 CLI Conference of Community and European Affairs Committees of Parliaments of the European Union, 11-12 May 2009, parts 1.4 and 1.5 [www.cosac.eu](http://www.cosac.eu).

<sup>30</sup> Also covering the evaluation of Eurojust activities provided for in Article 85 TFEU.

<sup>31</sup> 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 CLI Conference of Community and European Affairs Committees of Parliaments of the European Union, part 1.2.

The draft resolution of the abovementioned conference made concrete suggestions for the first time regarding national parliamentary control of Europol<sup>32</sup>.

The central recommendation was the creation of the ‘Parlopol-Committee’. ‘Parlopol’ was meant to form a network for exchanging information and taking initiatives in a more concerted way. It was to be composed of ‘parliamentarians of national Parliaments and the EP concerned with police and justice affairs which are subject to forms of European cooperation or integration within the Council of Ministers or within the governing bodies of Europol’.

Such a network would also facilitate a concerted approach by various national parliamentary control mechanisms *via* the Member States’ governmental representatives. It appears from the 2009 COSAC report referred to above that it was difficult for national Parliaments, on their own, to gather sufficient information on the relevant decisions of the Council of Ministers and of Europol’s Management Board.

#### **4. OUTLOOK FOR THE FUTURE: EUROPOL IN THE NEW INSTITUTIONAL FRAMEWORK**

The Lisbon Treaty has brought about a number of innovations that have a direct impact on Europol’s future development and a direct bearing on the subject of parliamentary scrutiny.

##### **4.1. The issue of the attribution of coercive powers — Article 88(3) TFEU**

Over the past decade, the extension of Europol’s mission to include coercive powers has been an open question. However, in the ensuing discussions, the hypothetical introduction of coercive powers was linked to the precondition of greater parliamentary and judicial oversight of Europol. In its Communication of 2002<sup>33</sup>, the Commission stated that farther-reaching measures of parliamentary control would become necessary if in the future Europol were to be entrusted with investigative powers. A similar conclusion was last mentioned in the working document of the rapporteur of the LIBE-Committee in February 2007<sup>34</sup>.

A development of this kind is now excluded. Article 88 (3) of the TFEU rules out any attribution of coercive powers to Europol in the future: *‘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.’*

Europol has none of the powers which typically fall within the remit of national police forces — such as the right to arrest, to perform house searches, or to wiretap. The provision granting Europol the right to request that Member States initiate criminal investigations<sup>35</sup> only enables it to instigate action in specific cases and not to force a Member State to do so. Europol cannot independently conduct enquiries in the Member States. The same applies to

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<sup>32</sup> Draft Resolution of the Interparliamentary Conference on Parliamentary Control of Europol in The Hague, 8 June 2001.

<sup>33</sup> Communication from the Commission to the European Parliament and the Council — Democratic Control over Europol, 26.02.2010, COM(2002) 95 final.

<sup>34</sup> Working document on the establishment of the European Police Office (Europol, Committee on Civil Liberties, Justice and Home Affairs, Rapporteur: Agustín Díaz de Mera García Consuegra, 19 February 2007 PE 384.589v01-00.

<sup>35</sup> Article 7 of the Council Decision. The right to request the opening of an investigation was already included in Article 3 of the Europol Convention. Now Member States are obliged to react to Europol’s request (‘shall’), while previously they were merely invited to do so (‘should’), but they can still decide not to initiate the requested investigation.

participation by Europol agents in joint investigation teams<sup>36</sup>, which takes place in a supporting capacity, while the taking of any coercive measures remains the sole responsibility of the competent authorities of the Member State<sup>37</sup>.

#### **4.2. Role of national Parliaments under the Treaty of Lisbon**

The Treaty of Lisbon increases the rights and obligations of national Parliaments to the extent that they actively contribute to the good functioning of the Union<sup>38</sup>. Their new role in the political processes includes:

- receiving from the Commission any draft legislative act (at the same time as it is transmitted to the EP and the Council);
- verifying the latter's compliance with the principle of subsidiarity.

Thus national Parliaments are now important actors at the early stages of European policy making.

Looking ahead to a future regulation on Europol, as required by Article 88(2) TFEU, the involvement of national Parliaments in scrutinizing draft legislative acts at European level also has implications for the issue of parliamentary scrutiny of Europol.

Under the Lisbon framework, the national Parliaments have the right to be informed about legislative proposals and have an opportunity to state their opinion. On the basis of national constitutional procedures, national Parliaments can issue an opinion on any legislative proposal by the EU legislator. Depending on national law, the Parliament's opinion may be binding upon the government's position in the Council.

Hence, national Parliaments will also be able to contribute to the shaping of the future regulation governing Europol.

### **5. CONCLUSION AND RECOMMENDATIONS**

There can be no doubt that law enforcement-related activities need to be supervised, above all where they interfere with citizens' fundamental rights and freedoms. In the case of Europol, Article 88 of the TFEU provides for the establishment of control mechanisms on the part of the European Parliament and national Parliaments. Europol's mission and tasks have the potential to affect individuals' right to privacy<sup>39</sup>. Control by the European Parliament together with national Parliaments is therefore necessary to enhance the democratic legitimacy of this particular area of transnational EU cooperation.

In recent years, discussions on the future of Europol have often focused on a possible extension of its role to include an attribution of coercive powers similar to the ones entrusted to national police forces. There has been a general consensus that such an extension of its powers should go hand in hand with a strengthening of parliamentary powers of supervision.

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<sup>36</sup> Article 6 of the Council Decision.

<sup>37</sup> The Council Regulation (EC) No 371/2009 of 27 November 2008 amending Regulation (Euratom, ECSC, EEC) No 549/69 on Europol staff determining the categories of officials and other servants of the European Communities to whom the specific provisions of Article 12, the second paragraph of Article 13 and Article 14 of the Protocol on the Privileges and Immunities of the Communities apply (OJ L 121, 15.05.2009, p.1) clarifies that immunity from legal proceedings does not apply to Europol staff participating in joint investigation teams.

<sup>38</sup> Article 12 of the Treaty on the European Union (TEU).

<sup>39</sup> Article 8 of the Charter of Fundamental Rights of the European Union.

As we have seen, despite a gradual enhancement of Europol's tasks, it has not acquired any coercive or autonomous investigative means of action<sup>40</sup> and the TFEU prevents the agency from acquiring any coercive powers in the future.

Given the nature of Europol's powers, the existing control mechanisms have generally been considered to be legally appropriate and — taken together — these mechanisms go beyond what generally exists with respect to the parliamentary control of police services in the Member States. However, there are a few outstanding issues in the debate about parliamentary oversight. Some of these were touched upon at a recent interparliamentary Committee meeting<sup>41</sup>.

Firstly, existing controls through the Parliaments, the national data supervisory bodies, Europol's Joint Supervisory Body and the Management Board are perceived as being exercised in a manner which is indirect, fragmented and not easy to understand. National Parliaments in particular consider the supervision process *via* the control of their governmental representative on the Board or in the Council to be cumbersome. Moreover, they have found it difficult to coordinate their efforts among each other. National Parliaments may still feel they that they lack information about Europol's work.

Secondly, in the absence of an incisive legislative role, the EP has for some time wished to exercise a closer and deeper scrutiny of Europol's activities.

The Council Decision of 2009 introduced innovations which extended considerably the role of the EP vis-à-vis Europol and also provided opportunities for regular information exchange mechanisms.

However, these new supervisory instruments do not touch upon coordination between the European Parliament and national Parliaments on the issue of monitoring. Moreover, in the absence of a 'COSAC-like' gathering of national parliamentary committees responsible for issues surrounding policing, the coordination of National Parliamentary efforts could be increased.

The recommendations put forward in the following sections are intended to address these issues, providing elements to feed into the inter-institutional debate on the mechanism for parliamentary scrutiny. The suggestions contained in sections 5.1 and 5.2 could be put into practice even before a new regulation on Europol is issued which should be done in 2013, because of the need to perform an evaluation of the current Council Decision and an impact assessment.

The shape and content of the forthcoming procedures for the democratic scrutiny of Europol will depend on the contributions which will be provided by the institutions and other stakeholders in the context of the ongoing reflection on Europol's future legal framework. This process, launched in April 2010 by the Commission, involves all the institutional stakeholders. A first meeting took place in July 2010.

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<sup>40</sup> Even Europol's recently acquired task in the context of the implementation of the EU-US Terrorist Financing Tracking agreement — the verification process of incoming requests for data — does not amount to a coercive measure.

<sup>41</sup> Interparliamentary Committee Meeting on 'Democratic Accountability in the Area of Freedom, Security and Justice; evaluating Europol, Eurojust, Frontex and Schengen'. 4-5 October 2010, Brussels.

The results of the current work of the inter-institutional group on regulatory agencies<sup>42</sup> will also provide valuable input to the debate. The overall reflection will be of the utmost importance for a sound and well thought-through proposal.

This communication is meant as a first step in that direction.

### **5.1. Setting up of a permanent joint or interparliamentary forum**

The Commission backs this idea, which has been put forward on several occasions and is supported by Parliaments and academics alike. The institutional framework of the Lisbon Treaty provides a fresh opportunity to put the idea into practice<sup>43</sup>.

An interparliamentary forum could consist of both the national Parliaments' and the EP's committees responsible for police matters. This joint body could meet at regular intervals and invite the Director of Europol to discuss questions relating to the agency's work. It could establish a special subgroup, for instance, to liaise directly with Europol<sup>44</sup>. The Commission recommends that the Chairman of the Management Board should also be invited to appear before this body.

By setting up this forum, a formal mechanism would be established for information exchange and coordination between national Parliaments and the EP with a view of unifying parliamentary control at European Union level (without prejudice to national parliamentary procedures). The Commission would welcome the opportunity to be actively involved in the work of this body.

This joint body would have to be flexible enough to allow it to operate efficiently. It lies within the power of both the EP and the national Parliaments to coordinate their work and enhance their cooperation, and they should be encouraged to take that initiative as well as ownership of their own procedures.

### **5.2. Increased transparency: a new communication strategy with the EP and national Parliaments**

In order to allow the EP to contribute to the provision of strategic guidelines and to take part in setting priorities for the agency's activities, it would be useful to hold a debate in the LIBE Committee on Europol's multiannual strategy and on its annual work programme.

In recent years, Europol has made considerable efforts to improve accountability, *inter alia* by developing performance measurement processes. At varying intervals, Europol produces evaluation reports and other documents assessing its work.

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<sup>42</sup> As established further to the Commission Communication COM(2008)135 final 'European Agencies — the way forward'.

<sup>43</sup> Article 9 of the Protocol (No 1) on the role of national Parliaments in the European Union of the TFEU states: 'The European Parliament and national Parliaments shall together determine the organisation and promotion of effective and regular interparliamentary cooperation within the Union'. Article 10 of the Protocol (No1) states: 'A Conference of Parliamentary Committees for Union Affairs may submit any contribution it deems appropriate for the attention of the European Parliament, the Council and the Commission. That conference shall in addition promote the exchange of information and best practice between national Parliaments and the European Parliament, including their special committees.'

<sup>44</sup> As was suggested by the Commission in its 2002 Communication.

Europol's democratic legitimacy will benefit from increased transparency vis-à-vis the EP and the national Parliaments. Accordingly, Europol should transmit systematically to the EP and, *via* designated contact points, also to the national Parliaments:

- a regular update of its operational achievements; and
- the results of the 'user survey'<sup>45</sup> (every 2 years).

To consolidate communication between a future interparliamentary forum and the governing bodies of Europol, a regular exchange of views could also be envisaged on the occasion of the submission of Europol's strategic documents or the abovementioned reports by the Director and/or the Chair of the Management Board. The network of the interparliamentary forum could also serve as an information channel, transmitting documents relating to Europol swiftly to the national Parliaments.

Finally, the Commission will keep the national Parliaments informed of the evolution of the Europol Council Decision evaluation.

### **5.3. Separating roles**

With a view to the future regulation, it will be important to ensure adequate separation between legislative and executive powers and between authorities with different roles. Hence, the Commission would not recommend that the EP designate members to the Management Board.

Equally, to avoid turning the appointment of the executive Director into a political issue, the Commission takes the view that he/she should be appointed by the Management Board and not by the Council or the EP.

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<sup>45</sup> The Europol User Survey measures the customer satisfaction level with Europol's overall performance and selected products and services and is sent electronically to selected users in Member States and partners once every 2 years.