

EUROPEAN PARLIAMENT

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REPORT

1. on the initiative of Ireland with a view to adopting a Council Act amending Europol's staff regulations
(5435/2004 – C5-0057/2004 – 2004/0804(CNS))

2. on the initiative of Ireland with a view to adopting a Council Decision adjusting the basic salaries and allowances applicable to Europol staff
(5436/2004 – C5-0058/2004 – 2004/0805(CNS))

3. on the initiative of Ireland with a view to adopting a Council Decision adjusting the basic salaries and allowances applicable to Europol staff
(5438/2004 – C5-0059/2004 – 2004/0806(CNS))

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

Rapporteur: Maurizio Turco

Symbols for procedures

- * Consultation procedure
majority of the votes cast
- **I Cooperation procedure (first reading)
majority of the votes cast
- **II Cooperation procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- *** Assent procedure
*majority of Parliament's component Members except in cases
covered by Articles 105, 107, 161 and 300 of the EC Treaty and
Article 7 of the EU Treaty*
- ***I Codecision procedure (first reading)
majority of the votes cast
- ***II Codecision procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- ***III Codecision procedure (third reading)
majority of the votes cast, to approve the joint text

(The type of procedure depends on the legal basis proposed by the Commission)

Amendments to a legislative text

In amendments by Parliament, amended text is highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). These suggested corrections are subject to the agreement of the departments concerned.

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PROCEDURAL PAGE

By letter of 3 February 2004 the Council consulted Parliament pursuant to Article 39(1) of the EU Treaty on the initiative of Ireland with a view to adopting a Council Act amending Europol's staff regulations (5435/2004 - 2004/0804(CNS)).

At the sitting of 9 February 2004 the President of Parliament announced that he had referred the initiative to the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs as the committee responsible and to the Committee on Budgets for its opinion (C5-0057/2004).

By letter of 3 February 2004 the Council consulted Parliament pursuant to Article 39(1) of the EU Treaty on the initiative of Ireland with a view to adopting a Council Decision adjusting the basic salaries and allowances applicable to Europol staff (5436/2004 – 2004/0805(CNS)).

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The Committee on Citizens' Freedoms and Rights, Justice and Home Affairs had appointed Maurizio Turco rapporteur at its meeting of 21 January 2004.

The committee considered the initiative on Ireland and the draft report at its meetings of 9 and 19 February 2004.

At the latter meeting it adopted the draft legislative resolution by 26 votes to 0, with 1 abstention.

The following were present for the vote: Jorge Salvador Hernández Mollar (chairman), Robert J. E. Evans (vice-chairman), Johanna L.A. Boogerd-Quaak (vice-chairwoman), Maurizio Turco (rapporteur), Mary Elizabeth Banotti, Kathalijne Maria Buitenweg (for Alima Boumediene-Thiery), Michael Cashman, Gérard M.J. Deprez, Koenraad Dillen, Adeline Hazan, Marie-Thérèse Hermange (for Thierry Cornillet), Sylvia-Yvonne Kaufmann (for Giuseppe Di Lello Finuoli), Margot Keßler, Timothy Kirkhope, Eva Klamt, Ole Krarup, Luís Marinho (for Sérgio Sousa Pinto), Erik Meijer (for Ilka Schröder, pursuant to Rule 153(2)), Elena Ornella Paciotti, Paolo Pastorelli (for Giuseppe Brienza), Hubert Pirker, Bernd Posselt, Olle Schmidt (for Baroness Ludford), Ole Sørensen (for Bill Newton Dunn), Joke Swiebel, Anna Terrón i Cusí and Christian Ulrik von Boetticher.

The Committee on Budgets decided on 18 February 2004 not to deliver an opinion.

The report was tabled on 2 March 2004.

1. DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the initiative of Ireland with a view to adopting a Council Act amending Europol's staff regulations

(5435/2004 – C5-0057/2004 – 2004/0804(CNS))

(Consultation procedure)

The European Parliament,

- having regard to the initiative of Ireland (5435/2004)¹,
 - having regard to Article 30(3) of the Convention setting up a European police office ('Europol Convention')²,
 - having regard to Article 39(1) of the EU Treaty, pursuant to which the Council consulted Parliament (C5-0057/2004),
 - having regard to Rules 67 and 61(4) of its Rules of Procedure,
 - having regard to the report by the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs (A5-0108/2004),
1. Rejects the initiative of Ireland;
 2. Calls on Ireland to withdraw its initiative;
 3. Instructs its President to forward its position to the Council and Commission and to the Government of Ireland.

¹ Not yet published in OJ.

² OJ C 316, 27.11.1995, p. 2.

2. DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the initiative of Ireland with a view to adopting a Council Decision adjusting the basic salaries and allowances applicable to Europol staff (5436/2004 – C5-0058/2004 – 2004/0805(CNS))

(Consultation procedure)

The European Parliament,

- having regard to the initiative of Ireland (5436/2004)¹,
 - having regard to Article 44 of the Council Act of 3 December 1998 laying down the staff regulations applicable to Europol employees (hereinafter referred to as the 'staff regulations'),
 - having regard to Article 39(1) of the EU Treaty, pursuant to which the Council consulted Parliament (C5-0058/2004),
 - having regard to Rules 67 and 61(4) of its Rules of Procedure,
 - having regard to the report of the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs (A5-0108/2004),
1. Rejects the initiative of Ireland;
 2. Calls on Ireland to withdraw its initiative;
 3. Instructs its President to forward its position to the Council and Commission and to the Government of Ireland.

¹ Not yet published in OJ.

3. DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

**on the initiative of Ireland with a view to adopting a Council Decision adjusting the basic salaries and allowances applicable to Europol staff
(5438/2004 – C5-0059/2004 – 2004/0806(CNS))**

(Consultation procedure)

The European Parliament,

- having regard to the initiative of Ireland (5438/2004)¹,
 - having regard to Article 44 of the Council Act of 3 December 1998 laying down the staff regulations applicable to Europol employees (hereinafter referred to as the 'staff regulations'),
 - having regard to Article 39(1) of the EU Treaty, pursuant to which the Council consulted Parliament (C5-0059/2004),
 - having regard to Rules 67 and 61(4) of its Rules of Procedure,
 - having regard to the report of the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs (A5-0108/2004),
1. Rejects the initiative of Ireland;
 2. Calls on Ireland to withdraw its initiative;
 3. Instructs its President to forward its position to the Council and Commission and to the Government of Ireland.

¹ Not yet published in OJ.

EXPLANATORY STATEMENT

The European Parliament has been consulted on certain proposals concerning Europol, particularly the initiatives presented by Italy and Ireland regarding the amendment of the Europol staff regulations and the basic salary and allowances of Europol staff. Your rapporteur believes that these proposals need 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 judicial and democratic control of Europol and on data protection and access to documents are being satisfied by the Council or not.

1. The Protocol to the Europol Convention

At the Justice and Home Affairs Council meeting of 27 and 28 November 2003, the Council adopted an act establishing, on the basis of Article 43(1) of the Europol Convention, a protocol amending the latter¹, 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 EP had already been consulted on the Danish proposal which had given rise to the act aforesaid, and had decided to reject it on the basis of the reasons set out in the accompanying Recommendation to the Council². The EP made a series of requests - already set out, in part, in an earlier Recommendation³ - 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 following table sets out the Council's follow-up to the EP recommendations on Europol:

European Parliament requests	Council follow-up
Communitisation of Europol	No follow-up; the IGC has blocked the draft European Constitution, which provided for communitisation, and therefore parliamentary budgetary powers (including budgetary control) over Europol
Funding Europe through the Community budget	

¹ Document 13650/03 and 13649/03 ADD 1.

² See the Turco and Von Boetticher reports and the Recommendation to the Council, co-rapporteurs Turco-Von Boetticher.

³ EP Recommendation (Turco-Von Boetticher report) to the Council, 30 May 2002, P5-TAPROV(2002)0269.

<p>Amendment of Europol Convention Article 34 to provide for:</p> <ul style="list-style-type: none"> - a single annual activities report should be forwarded to Council and Parliament - the formal right to hold an exchange of views with the <u>Council Presidency</u> on the annual activities report - a formal right to ask the <u>Director of Europol</u> to appear before the appropriate parliamentary committee 	<p>Partially accepted: Point 8.2 of the Protocol states: 'The <u>Presidency of the Council</u> 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 <u>assisted by the Director of Europol</u>. The Presidency of the Council or its representative shall, with respect to the European Parliament, take into account the obligations of discretion and confidentiality'. (See below for annual reports.)</p>
<p>Amendment of Article 24(6) of the Europol Convention, so as to make it obligatory for the common control authority responsible for data protection to draw up an annual activities report, forward it to the EP and present it to the appropriate parliamentary committee</p>	<p>Accepted in part: Point 12 of the Protocol states: 'In Article 24(6) the words "In accordance with the procedure laid down in Title VI of the Treaty on European Union, these shall be forwarded to the Council" shall be replaced by the following: 'Such reports shall be forwarded <u>to the European Parliament and the Council</u>'.</p>
<p>Amendment of Article 28 of the Europol Convention providing for the reform of the Europol Administrative Council to ensure that over and above a representative of each Member State, it also contained two representatives from the Commission and Parliament respectively</p>	<p>No follow-up</p>
<p>Amendment of Article 29 of the Europol Convention providing for the EP to be involved on an equal basis with the Council in the Europol Director nomination and dismissal process</p>	<p>No follow-up</p>

This shows that the Protocol provides only a minimal response to the problems and demands which the EP has repeatedly raised. In particular, the EP continues to have no real powers of decision or control or budgetary powers and remains only virtually capable of exercising direct control on Europol. Furthermore, the European Constitution and its proposals on Europol, which your rapporteur finds satisfactory, has been put on hold and its adoption postponed to an unknown date.

Your rapporteur would highlight, with concern, that the proposal made by certain national and European MPs, which the Commission had taken up in its Communication on democratic control of Europol¹ on setting up a joint EP-national parliament committee, was rejected by the Council when it adopted the Protocol, apparently for legal reasons. The Council's Legal

¹ Commission Communication to the European Parliament and the Council, 'Democratic control of Europol' (COM(2002) 95).

service has claimed in an unjustifiably confidential document¹, that the Europol Convention or its Protocols, assimilated to an act of secondary law, could not decide to establish a mechanism which would co-involve the national parliaments, since this was something that could be decided only by primary legal provisions, or by revising the Union Treaties. At the same time, the Legal Service explained that 'the Protocol could have assigned certain remits or roles to one or more of the Union's institutions ... (or) set up new, specific supervisory bodies'. The EP could therefore have been entrusted by the Protocol with greater decisional and control powers over Europol. Here, it is clear that the Council, by refusing to include in the Protocol most of the EP's recommendations, has made a choice which is not a purely legal one, but quite clearly political.

Various national parliaments had returned opinions on the Danish proposal for a Protocol, and particularly attacked the rejection of the possible establishment of the joint committee, and the exclusion of the national parliaments. The European Scrutiny Committee of the House of Commons stated that it was prepared not to insist on the inclusion of the joint committee in the Protocol if the former was provided for in the European Constitution²; the UK House of Lords Select Committee on the European Union's report on Europol³ recommended to the government to push for the setting up of a joint committee, which should be restored into the text of the Protocol. The French National Assembly returned a very detailed report on Europol by Mr Floch⁴, which concentrated principally on the work of the Constitutional Convention on the Europol issue, and claimed that '*its disappearance from the Danish draft Protocol ... is open to criticism*'⁵. The French Senate, for its part, has produced a report by Senator Alex Türk (Vice-Chair of the CNIL) which is extremely critical of the Protocol⁶. Quite apart from disputing the claims of the Council Legal Service⁷, Senator Türk, echoing various criticisms also raised in the National Assembly, underlined that it was impossible for the Europol Administrative Council to exercise effective control of the Europol Director, owing to both the excessive size of the Council (involving circa 60 individuals, who will number circa 100 after enlargement!) and to the rotating presidency.

¹ Legal Service contribution, 11 November 2003, 14467/03 LIMITE JUR 434 EUROPOL 57; a document which is not accessible from the Council's register, which demonstrates the impossibility of controlling some Community institutions and Europol effectively; your rapporteur attacked the Council in the Court of Justice for denying access to its Legal Service's opinions - *Turco vs Council of the European Union*, T-84/03.

² See, e.g. item 6.22 of its fifth report, <http://www.parliament.the-stationery-office.co.uk/pa/cm200203/cmselect/cmeuleg/63-v/6308.htm>.

³ 'Europol's role in fighting crime', Select Committee on the European Union, House of Lords, Session 2002-03, 5th report, 28 January 2003, available on <http://www.parliament.the-stationery-office.co.uk/pa/ld200203/ldselect/ldcom/43/4301.htm>. The report further criticised the fact that the Danish proposal had been gutted of most of the initially envisaged control mechanisms. Furthermore, in the section concerning the USA-EU Agreement on exchange of personal data, it illustrates how national parliaments are being effectively prevented from exercising proper democratic control, which is thus weak or non-existent at both national and European levels - see paragraph 49 of the House of Lords report.

⁴ Report on the future of Europol, Assemblée Nationale, Doc. No. 819, by Jacques Floch, registered 29 April 2003, available on <http://www.assemblee-nat.fr/12/pdf/europe/rap-info/i0819.pdf>.

⁵ See end of page 36 of the report.

⁶ French Senate, Report by Senator Alex Türk, No 58, annexed to the Minutes of the sitting of 12 November 2003, available on <http://www.senat.fr/rap/103-058/103-058.html>.

⁷ The rapporteur states that the Legal Service's claim is inexact from a legal point of view, because the Convention establishing Europol is not, today, an instrument of secondary legislation, but an EU Convention subject to national ratification. Furthermore, the Europol Convention has, since it was set up, established the Joint Supervisory Body. This body is independent, and is not provided for in the current Treaties.

Senator Türk further stressed the limited powers of the Joint Supervisory Body (JSB), both with regard to the scope of its powers and the fact that it was funded by the very body it was supposed to control, and because it was simply over-ridden when the Member States directly exchanged data with Europol outwith the rules of the Convention, under the MSOPES¹ method (something your rapporteur has only just heard about, and which he finds extremely serious), and finally, because the Authority's recommendations are not binding. The resolution adopted in the Senate called on the French Government to oppose the adoption of the Protocol as long as there was no reintroduction of the possibility of setting up a Joint Parliamentary Committee.

2. Personal data protection

In its last Turco-Von Boetticher Recommendation 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 and with European institutions or bodies (such as the draft agreement between Europol and Eurojust). Furthermore, the Commission has stated that Europol could be a possible 'filter' for providing personal data of transatlantic travellers to the USA. The Commission has announced that it would present a legal act in this connection in 2004. Your rapporteur deplores the endless delay, and observes that the Commission and Council's failure to act to date - particularly in view of the repeated requests from the EP - is extremely serious.

With regard to protecting personal data, Senator Alex Türk's report deplored the limited nature of the JSB's powers, and highlighted certain anomalies in the practice of Europol and Member States with regard to data exchange, noting that he had been able to observe, in his role as Chairman of the JSB, the sheer scope of Europol's powers and the problem of guaranteeing respect for rules on data protection, and that when he was chairman of the JSB, he had more than once protested against such practices (i.e. MSOPES), which escape all control mechanisms. The House of Lords' report casts further doubts on the independence and workings of the JSB².

3. Access to documents

¹ On page 8 we read: 'les administrations nationales et Europol ont tendance à développer des relations en dehors du cadre de la Convention. Ainsi, les services nationaux s'adressent parfois directement à Europol pour échanger des informations sans passer par l'intermédiaire des unités nationales auprès d'Europol. Il arrive également que, sous couvert de soutien technique, l'Office et les Etats membres mettent en place des fichiers préfigurant de possibles fichiers d'analyse, sans recourir à la procédure prévue par la Convention pour la création de tels fichiers. Cette pratique est désignée dans le jargon européen par le terme de «MSOPES» («Member State Operational Projects With Europol Support» que l'on pourrait traduire par «organisation mutuelle de fichiers d'analyse entre le système central d'Europol et les autorités nationales»)'.

² Paragraph 53 states: 'the JSB does not appear to have taken a sufficiently independent approach on the serious points of concern that we identified. Our concern was not allayed when we took evidence from the Deputy Information Commissioner, who represents the United Kingdom on the JSB. We were left with the impression that on some issues it had let its acknowledgment of the political imperative to secure an agreement override its responsibility for ensuring essential data protection safeguards.'

In its recommendation to Europol, the EP demanded that the former adhere to Regulation (EC) No 1049/2001 on public access to documents, and implement its principles as soon as possible. Europol claimed in front of the House of Lords¹ that it was applying, by analogy, the Council's rules in this respect, but citizens and other institutions must be made aware of this at least, e.g. by posting it on the Europol Internet site (where, moreover, not all the agreements with other institutions, bodies or states, are featured). Your rapporteur would point out that in fact, on the site the rules on access to documents are not updated to take account of Regulation 1049, and that the whole issue of access to Europol documents is basically held over by the Protocol; he would therefore ask Europol to provide the EP with the evidence supporting its claims before the House of Lords.

Conclusions

The Council is quite clearly turning a deaf ear to the voices of the EP and the national parliaments. The adoption of the Protocol and its feeble contents is nothing more than a slap in the face to the national parliaments and the EP, and to the voters whom they represent. Europol continues to amass powers and operating capabilities which escape all democratic and judicial control at both national and European levels. For this reason, and in keeping with the EP's established practice, your rapporteur proposes that we reject the initiatives on which the EP is being consulted here².

¹ See paragraph 60 of the Lords' report.

² The rapporteur thanks Ottavio Marzocchi, advisor to Radical MEPs, for his contribution to this report.