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## **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), the Protocol on the interpretation, by way of preliminary rulings, by the Court of Justice of the European Communities of the Convention on the establishment of a European Police Office and the Protocol on the privileges and immunities of Europol, the members of its organs, the deputy directors and the employees of Europol  
(5455/2002 – C5-0053/2002 – 2002/0804(CNS))

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 Citizens' Freedoms and Rights, Justice and Home Affairs

Rapporteur: Gérard M.J. Deprez



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## PROCEDURAL PAGE

By letter of 1 February 2002, the Council consulted Parliament, pursuant to Article 39 of the EU Treaty, 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), the Protocol on the interpretation, by way of preliminary rulings, by the Court of Justice of the European Communities of the Convention on the establishment of a European Police Office and the Protocol on the privileges and immunities of Europol, the members of its organs, the deputy directors and the employees of Europol (5455/2002 – 2002/0804(CNS)).

At the sitting of 7 February 2002 the President of Parliament announced that he had referred this initiative to the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs as the committee responsible (C5-0053/2002).

The Committee on Citizens' Freedoms and Rights, Justice and Home Affairs appointed [Gérard M.J. Deprez](#) rapporteur at its meeting of 20 February 2002.

By letter of 5 April 2002, the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs sought authorisation from the Conference of Presidents to draw up a recommendation to the Council pursuant to Rule 107 of the Rules of Procedure.

At the sitting of 16 May 2002, the President announced that the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs had been authorised to draw up a recommendation to the Council pursuant to Article 39(3) of the EC Treaty and Rule 107 of the Rules of Procedure.

It considered the initiative of the Kingdom of Belgium and the Kingdom of Spain and draft report at its meetings of 19 March 2002, 18 April 2002 and 14 May 2002.

At the last meeting it adopted the draft legislative resolution and the proposal for a recommendation by 35 votes to 3.

The following were present for the vote: Ana Palacio Vallelersundi, chairman; Robert J.E. Evans, Lousewies van der Laan and Giacomo Santini, vice-chairmen; Gérard M.J. Deprez, rapporteur; Hans Blokland (for Ole Krarup pursuant to Rule 153(2)), Christian Ulrik von Boetticher, Giuseppe Brienza, Kathalijne Maria Buitenweg (for Alima Boumediene-Thiery), Marco Cappato (for Mario Borghezio), Charlotte Cederschiöld, Carmen Cerdeira Morterero, Carlos Coelho, Giuseppe Di Lello Finuoli, Jorge Salvador Hernández Mollar, Pierre Jonckheer, Anna Karamanou (for Gerhard Schmid), Margot Keßler, Timothy Kirkhope, Lucio Manisco (for Fodé Sylla), Luís Marinho (for Sérgio Sousa Pinto), William Francis Newton Dunn, Arie M. Oostlander (for Thierry Cornillet), Elena Ornella Paciotti, Paolo Pastorelli (for Eva Klamt), Hubert Pirker, Martine Roure, Heide Rühle, Olle Schmidt (for Baroness Sarah Ludford), Ilka Schröder, Ole Sørensen (for Francesco Rutelli), Patsy Sørensen, The Earl of Stockton (for Hartmut Nassauer), Joke Swiebel, Anna Terrón i Cusí, Maurizio Turco, Gianni Vattimo (for Martin Schulz) and Olga Zrihen Zaari (for Adeline Hazan).

The report was tabled on 16 May 2002.

The deadline for tabling amendments will be indicated in the draft agenda for the relevant part-session.

## LEGISLATIVE PROPOSAL

**Proposal concerning 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), the Protocol on the interpretation, by way of preliminary rulings, by the Court of Justice of the European Communities of the Convention on the establishment of a European Police Office and the Protocol on the privileges and immunities of Europol, the members of its organs, the deputy directors and the employees of Europol (5455/2002 - C5-0053/2002 – 2002/0804 (CNS))**

The proposal is rejected.

## DRAFT LEGISLATIVE RESOLUTION

**European Parliament legislative resolution 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), the Protocol on the interpretation, by way of preliminary rulings, by the Court of Justice of the European Communities of the Convention on the establishment of a European Police Office and the Protocol on the privileges and immunities of Europol, the members of its organs, the deputy directors and the employees of Europol (5455/2002 – C5-0053/2002 – 2002/0804 (CNS))**

### **(Consultation procedure)**

*The European Parliament,*

- having regard to the initiative of the Kingdom of Belgium and the Kingdom of Spain (5455/2002)<sup>1</sup>,
  - having been consulted by the Council pursuant to Article 39(1) of the EU Treaty (C5-0053/2002)
  - having regard to Rules 106 and 67 of its Rules of Procedure,
  - having regard to the report of the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs (A5-0173/2002),
1. Rejects the initiative of the Kingdom of Belgium and the Kingdom of Spain;
  2. Asks, therefore, the Kingdom of Belgium and the Kingdom of Spain to withdraw their initiative and to submit a new one with a view to the adoption of Council decision

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<sup>1</sup> OJ C 42, 15.2.2002, p. 8.

pursuant to Article 34(2)(c) of the TEU to replace the current Europol Convention;

3. Instructs its President to forward its position to the Council and Commission and to the Governments of the Kingdom of Belgium and of the Kingdom of Spain.



## PROPOSAL FOR A RECOMMENDATION

### **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**

#### *The European Parliament,*

- having regard to Article 39(3) of the EU Treaty,
  - having regard to Articles 29 and 30 of the EU Treaty,
  - having regard to the Council Act of 26 July 1995 drawing up the Convention based on Article K.3 of the Treaty on European Union, on the establishment of a European Police Office (Europol Convention)<sup>1</sup> and to the protocols annexed and the changes made thereto,
  - having regard to 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), the Protocol on the interpretation, by way of preliminary rulings, by the Court of Justice of the European Communities of the Convention on the establishment of a European Police Office and the Protocol on the privileges and immunities of Europol, the members of its organs, the deputy directors and the employees of Europol<sup>2</sup>,
  - having regard to the Commission communication dated 26 February 2002 entitled 'Democratic Control over Europol'<sup>3</sup>,
  - having regard to Rule 107 of its Rules of Procedure,
  - having regard to the proposal for a recommendation of the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs (A5-0173/2002),
- A. whereas Europol must become an effective tool in the fight against organised crime in the European Union, in particular by maintaining close cooperation with Eurojust, and whereas, in a constantly changing international environment, that implies that Europol must be able to operate in a flexible manner so that it may make an effective contribution in the fight against the manifold forms of serious crime,
- B. whereas the current procedure for amending the Convention, which requires ratification by all the Member States in accordance with their respective constitutional rules, is excessively lengthy and cumbersome and, consequently, entirely

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

<sup>2</sup> 5455/2002 – C5-0053/2002 – 2002/0804(CNS)).

<sup>3</sup> COM(2002) 95.

inappropriate,

- C. whereas, by proposing that, henceforth, amendments to the Europol Convention should be adopted by the Council, the initiative of the Kingdom of Belgium and the Kingdom of Spain seems to be taking a step in the right direction, but whereas it actually has three major shortcomings:
1. it restricts Europol, in law, within the ambit of simple intergovernmental cooperation, contrary to the express requests repeatedly submitted by the European Parliament and at a time when the Council is entrusting to Europol an increasing number of tasks to be carried out on behalf of the Union;
  2. after enlargement of the Union, it may well cause excessive slowness, or even result in an impasse, in the decision-making procedure, given that all decisions relating to Europol must be taken by the Council acting unanimously;
  3. it confirms the marginal role to be played by the European Parliament with regard to everything relating to Europol, while depriving it of the legal means and institutional framework which might enable it in the future to exercise genuine democratic control,
- D. whereas an alternative route does exist, one which would provide an appropriate response to the major shortcomings set out above: application of Article 34(2)(c) of the EU Treaty would enable the Council to replace the Convention with a decision,
- E. whereas replacement of the Convention with a decision pursuant to Article 34 of the EU Treaty would have the direct effect of integrating Europol into the third pillar and, consequently, into the Community legal order, with the following three considerable advantages:
1. improvement of Europol's operational capacities, since, pursuant to Article 34 of the EU Treaty, all implementing measures are to be adopted by the Council acting by a qualified majority (with no derogation possible). That would enable the Union to react more rapidly in an emergency;
  2. improvement of parliamentary scrutiny, since, firstly, Parliament must be consulted before the Council adopts any implementing measures (Article 39 of the EU Treaty) and, secondly, Parliament may bring an action before the Court of Justice should its rights not be respected;
  3. automatic application of the rules governing the jurisdiction of the Court of Justice (Article 35 of the EU Treaty) to all the decisions adopted by the Council pursuant to Article 34 of the EU Treaty (and, therefore, to the Convention itself, in the event that it is replaced with a Council decision),
- F. whereas it is imperative and a matter of urgency to strengthen democratic control over Europol,
- G. whereas the extension of powers and responsibilities envisaged by the initiative of the Kingdom of Belgium and the Kingdom of Spain, through the introduction of joint investigation teams, reinforces the current imbalance between the executive and the legislative bodies, and whereas, as a European organ, Europol must be monitored by

another European organ – the European Parliament – and not by national parliaments,

H. whereas the opportunities for parliamentary control open to the European Parliament would be considerably increased if Europol's budget were to be incorporated in the Community budget,

1. Addresses the following recommendations to the Council:

#### Recommendation 1: legal basis

- Calls on the Council to replace:
  - the Convention on the establishment of a European Police Office (Europol Convention)
  - the Protocol on the interpretation, by way of preliminary rulings, by the Court of Justice of the European Communities of the Convention on the establishment of a European Police Office
  - and the Protocol on the privileges and immunities of Europol, the members of its organs, the deputy directors and the employees of Europol

with a Council decision or decisions taken pursuant to Article 34(2)(c) of the Treaty on European Union, and in so doing to ensure due respect for the EU institutions' specific powers and, accordingly, to take action pursuant to Articles 30 and 31 of the TEU to recast the Europol Convention provisions governing police and judicial cooperation in criminal matters, with particular regard to the basic elements of the criminal acts in respect of which Europol has powers and responsibilities;

#### Recommendation 2: budget

- Calls on the Council, as part of that decision, to amend the arrangements for the funding of Europol by replacing Member State contributions with funding from the EU budget, while respecting the prerogatives of the budgetary authorities;

### Recommendation 3: tasks

- Calls on the Council, as part of that decision, to adopt the provisions required to:
  - regulate Europol participation in joint investigation teams,
  - enable Europol to ask the competent Member State authorities to conduct investigations in specific cases,
  - equip Europol with more effective means to combat money-laundering and to improve its capacity to assist the Member States in that respect (Council Act of 30 November 2000 on the drawing up of a Protocol amending Article 2 of and the Annex to the Europol Convention);

### Recommendation 4: parliamentary control

- Calls on the Council, as part of that decision, to strengthen the European Parliament's democratic power of control over Europol and, to that end, to adopt:
  - a provision amending Article 34 of the Europol Convention and laying down that one single annual activity report shall be forwarded to the Council and to the European Parliament,
  - a provision amending Article 34 of the Europol Convention and conferring on the European Parliament the formal right to hold an exchange of views with the Council Presidency on the annual activity report,
  - a provision amending Article 34 of the Europol Convention and conferring on the European Parliament the formal right to invite the Director of Europol to appear before the appropriate committee,
  - a provision amending Article 24(6) of the Europol Convention and requiring the joint supervisory authority responsible for data protection to draw up an annual activity report, to forward it to the European Parliament and to give an account thereof before the appropriate committee;
  - a provision amending Article 28 of the Europol Convention and altering the composition of the Europol Management Board to include two representatives of the Commission and two of the European Parliament, in addition to one representative of each Member State,
  - a provision amending Article 29 of the Europol Convention and laying down that the European Parliament shall be involved in the procedure for the appointment and dismissal of the Director of Europol, jointly with the Council,

### Recommendation 5: data protection

- Calls on the Council to adopt, as part of the decision replacing the Convention, a provision which guarantees that the data protection provided and the supervision of compliance with these standards are equivalent to those guaranteed under the first pillar (Directive 95/46/EC);

### Recommendation 6: cooperation

- Calls on the Council, as part of that decision, to take the measures required to ensure close cooperation between Europol, Eurojust and OLAF in order to strengthen the operational efficiency of those bodies in the fight against organised crime and terrorism.
  
- 2. Instructs its President to forward this recommendation to the Council, and, for information, to the Commission, and to the governments and parliaments of the Member States.

## EXPLANATORY STATEMENT

### Introduction

Since its creation, Europol has developed in an extremely dynamic fashion. Although the mandate of the original Europol Drugs Unit was restricted to combating drug trafficking, illicit trade in radioactive and nuclear materials, clandestine immigration networks and illegal vehicle trafficking<sup>1</sup>, that mandate has gradually been extended to cover trafficking in human beings and money-laundering<sup>2</sup>, terrorist activities against life, limb, personal freedom or property<sup>3</sup>, forgery of money and means of payment<sup>4</sup> and, finally, to serious forms of international crime<sup>5</sup>.

Although those extensions to Europol's mandate have been significant, they have, however, been no more than horizontal extensions: Europol's duties and operational activities have remained unchanged and cover simply the collection, analysis and exchange of data.

### The Belgian-Spanish initiative

The current Belgian-Spanish initiative aims to give Europol's development a fresh impetus, firstly, by entrusting operational duties to Europol (see point 1 below) and, secondly, by simplifying the procedure for future amendments to the Europol Convention (see point 2 below).

#### 1. Introduction of joint investigation teams

Pursuant to Article 30(2)(a) and (b) of the EU Treaty, the Council, within a period of five years after the entry into force of the Treaty of Amsterdam, is to enable Europol, firstly, to participate in operational actions by joint teams and, secondly, to ask the Member States to conduct investigations in specific cases. To that end, it is proposed that the tasks listed in Article 3 of the Europol Convention be correspondingly extended. Cooperation is to extend to all the activities of the investigation teams, except for the application of coercive measures. Under the conditions laid down in the Europol Convention, any information obtained by Europol officials participating in a joint investigation team may be entered in the computerised system of collected data. Arrangements for participation by Europol officials in a joint investigation team are to be agreed between the Director of Europol and the participating Member States. The rules governing such arrangements are to be determined unanimously by the Management Board of Europol. Civil and criminal liability of Europol officials are to be governed by the legal provisions of the Member State in whose territory the

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<sup>1</sup> Joint action of 10 March 1995 adopted by the Council on the basis of Article K.3 of the Treaty on European Union concerning the Europol Drugs Unit, OJ L 62, 20.3.1995, p. 1.

<sup>2</sup> Joint action of 16 December 1996 adopted by the Council on the basis of Article K.3 of the Treaty on European Union extending the mandate given to the Europol Drugs Unit, OJ L 342, 31.12.1996, p. 4.

<sup>3</sup> Council Decision of 3 December 1998 instructing Europol to deal with crimes committed or likely to be committed in the course of terrorist activities against life, limb, personal freedom or property, OJ C 26, 30.1.1999, p. 22.

<sup>4</sup> Council Decision of 29 April 1999 extending Europol's mandate to deal with forgery of money and means of payment, OJ C 149, 18.5.1999, p. 16.

<sup>5</sup> Council Decision of 6 December 2001 extending Europol's mandate to deal with the serious forms of international crime listed in the Annex to the Europol Convention, OJ C 362, 18.12.2001, p. 1.

officials are operating (new Articles 3a(5) and 39a). Accordingly, the Protocol on privileges and immunities is to be amended in such a way that immunity is not guaranteed in respect of official acts undertaken by joint investigation teams.

## **2. Simplification of the procedure for amending the Convention**

Since there is no provision in the current version of the Europol Convention for Europol officials to participate in joint investigation teams, the Convention needs to be amended. That will require signature and ratification by all the Member States. That cumbersome procedure would also have to be applied to any future amendments. The Belgian-Spanish initiative therefore proposes that any future amendments be made technically simpler by the incorporation in the Europol Convention of a provision that any future amendments to the Convention are to be made using a much simpler instrument: the Council decision

### **Assessment of the initiative**

#### **1. Introduction of joint investigation teams**

With regard to the introduction of joint investigation teams, the initiative is to be welcomed in so far as it corresponds with the task set out in the Treaty of Amsterdam. However, it must be made quite clear that the assignment of operational powers to Europol will have to be accompanied by the establishment of genuine democratic scrutiny. The extension of powers that is being sought will exacerbate the current imbalance in the division of powers. As a European organ, Europol must be scrutinised by a different European organ - the European Parliament – and not by national parliaments or national delegates who would scrutinise simply their own member of the Management Board or matters which affected their own country. Sadly, however, the Belgian-Spanish initiative has taken no action on the request<sup>1</sup> made repeatedly by the European Parliament with regard to such scrutiny.

#### **2. Simplification of the procedure for amending the Convention**

In a constantly changing international environment, Europol must be able act in a flexible manner so that it may make an effective contribution in the fight against the manifold forms of serious crime.

In that connection, the current procedure for amending the Convention - which requires ratification by all the Member States in accordance with their respective constitutional rules - is excessively lengthy and cumbersome and, consequently, entirely inappropriate.

In proposing that, henceforth, amendments to the Europol Convention should be adopted by

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<sup>1</sup> Recommendation of the European Parliament to the Council on Europol: reinforcing parliamentary controls and extending powers (A4-0064/1999, adopted on 13 April 1999, rapporteur: Hartmut Nassauer); Report on the initiative from the Portuguese Republic with a view to the adoption of a Council Act on the drawing up on the basis of Article 43(1) of the Convention on the Establishment of a European Police Office (Europol Convention) of a Protocol amending Article 2 and the Annex to that Convention (A5-0312/2000, adopted on 14 November 2000, rapporteur: Anna Karamanou); Report on the initiative of the Kingdom of Belgium and the Kingdom of Sweden with a view to adopting a Council Decision extending Europol's mandate to deal with the serious forms of international crime listed in the Annex to the Europol Convention (A5-0370/2001, adopted on 13 November 2001, rapporteur: Maurizio Turco).

the Council, the initiative of the Kingdom of Belgium and the Kingdom of Spain seems to be taking a step in the right direction. In actual fact, that is not the case, and the solution proposed must be rejected on the grounds that it has three major shortcomings:

1. It restricts Europol, in law, within the ambit of simple intergovernmental cooperation, contrary to the express requests repeatedly submitted by the European Parliament<sup>1</sup> and at a time when the Council is entrusting to Europol an increasing number of tasks to be carried out on behalf of the Union.
2. After enlargement of the Union, it may well cause excessive slowness, or even result in an impasse, in the decision-making procedure, given that all decisions relating to Europol must be taken by the Council acting unanimously.
3. It confirms the marginal role to be played by the European Parliament with regard to everything relating to Europol, while depriving it of the legal means and institutional framework which might enable it in the future to exercise genuine democratic control.

The solution proposed by the Kingdom of Belgium and the Kingdom of Spain is all the more incomprehensible and unacceptable since an alternative route does exist, one which would provide an appropriate response to the major shortcomings set out above.

Article 34(2)(c) of the Treaty on European Union (TEU) actually gives the Council the opportunity to adopt decisions for any other purpose consistent with the objectives of Title VI of the TEU, excluding any approximation of the laws and regulations of the Member States. Such decisions are to be binding and may not entail direct effect. The Council, acting by a qualified majority, is to adopt measures necessary to implement such decisions at the level of the Union.

Replacement of the Convention with a Council decision pursuant to Article 34 of the EU Treaty would have the direct effect of integrating Europol into the third pillar and, consequently, into the Community legal order, with the following three considerable advantages:

1. Improvement of Europol's operational capacities, since, pursuant to Article 34, all implementing measures are to be adopted by the Council acting by a qualified majority (with no derogation possible). That would enable the Union to react more rapidly in an emergency.
2. Improvement of parliamentary scrutiny, since, firstly, Parliament must be consulted before the Council adopts any implementing measures (Article 39 of the EU Treaty) and, secondly, Parliament may bring an action before the Court of Justice should its rights not be respected.

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<sup>1</sup> Recommendation of the European Parliament to the Council on Europol: reinforcing parliamentary controls and extending powers (A4-0064/1999, adopted on 13 April 1999, rapporteur: Hartmut Nassauer); Report on the initiative of the Kingdom of Belgium and the Kingdom of Sweden with a view to adopting a Council Decision extending Europol's mandate to deal with the serious forms of international crime listed in the Annex to the Europol Convention (A5-0370/2001, adopted on 13 November 2001, rapporteur: Maurizio Turco).



3. Automatic application of the rules governing the jurisdiction of the Court of Justice (Article 35 of the EU Treaty) to all the decisions adopted by the Council pursuant to Article 34 of the EU Treaty (and, therefore, to the Convention itself, in the event that it is replaced by a Council Decision).

The conversion of the Europol Convention into a Council Decision would constitute a simple and clear solution, one which corresponds to the spirit of the Treaty of Amsterdam and to the basic concept of the European Union as an area of freedom, security and justice. It is difficult to understand why that solution was not selected.

### **Conclusion**

For the reasons set out above, your rapporteur recommends rejection of this initiative in its present form. On behalf of the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs, your rapporteur calls on the Kingdom of Belgium and the Kingdom of Spain to submit a new initiative which seeks the replacement of the Europol Convention with a Council Decision, in accordance with Article 34(2)(c).