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REPORT

1. 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

(9093/01 – C5-0266/01 – 2001/0817(CNS))

and

2. on the initiative of the Kingdom of Sweden with a view to the adoption of a Council Act amending the Council Act of 12 March 1999 adopting the rules governing the transmission of personal data by Europol to third States and third bodies

(8785/01 – C5-0218/01 – 2001/0807(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

1. By letter of 18 June 2001 the Council consulted Parliament, pursuant to Article 39(1) of the EU Treaty, 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 (9093/01 – 2001/0817(CNS)).

At the sitting of 2 July 2001 the President of Parliament announced that she had referred this proposal to the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs as the committee responsible (C5-0266/01).

2. By letter of 30 May 2001 the Council consulted Parliament, pursuant to Article 39(1) of the EU Treaty, on the initiative of the Kingdom of Sweden with a view to the adoption of a Council Act amending the Council Act of 12 March 1999 adopting the rules governing the transmission of personal data by Europol to third States and third bodies (8785/01 – 2001/0807(CNS)).

At the sitting of 31 May 2001 the President of Parliament announced that she had referred this proposal to the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs as the committee responsible (C5-0218/01).

The Committee on Citizens' Freedoms and Rights, Justice and Home Affairs appointed Maurizio Turco rapporteur at its meeting of 11 July 2001.

It considered the initiatives of the Kingdom of Belgium and the Kingdom of Sweden and the draft report at its meetings of 27 August, 9 October and 22 October 2001.

At the last meeting it adopted

1. the draft legislative resolution by 29 votes to 7.
2. the draft legislative resolution by 30 votes to 6.

The following were present for the vote: Graham R. Watson, chairman; Robert J.E. Evans and Bernd Posselt, vice-chairmen; Maurizio Turco, rapporteur; Hans Blokland (for Ole Krarup), Alima Boumediene-Thiery, Marco Cappato, Michael Cashman, Charlotte Cederschiöld, Carmen Cerdeira Morterero (for Ozan Ceyhun), Carlos Coelho, Thierry Cornillet, Gérard M.J. Deprez, Giuseppe Di Lello Finuoli, Francesco Fiori (for Marcello Dell'Utri, pursuant to Rule 153(2)), Pernille Frahm, Evelyne Gebhardt (for Adeline Hazan), Daniel J. Hannan, Jorge Salvador Hernández Mollar, Margot Keßler, Timothy Kirkhope, Eva Klamt, Baroness Sarah Ludford, Lucio Manisco (for Fodé Sylla), Luís Marinho (for Martin Schulz), Juan Andrés Naranjo Escobar (for Mary Elizabeth Banotti), Elena Ornella Paciotti, Paolo Pastorelli, Martine Roure (for Sérgio Sousa Pinto), Agnes Schierhuber (for Hartmut Nassauer, pursuant to Rule 153(2)), Patsy Sörensen, Anna Terrón i Cusí, Astrid Thors (for Bertel Haarder, pursuant to Rule 153(2)), Anne E.M. Van Lancker (for Joke Swiebel), Gianni Vattimo and Christian Ulrik von Boetticher.

The report was tabled on 24 October 2001.

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

1. LEGISLATIVE PROPOSAL

1. 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 (9093/01 – C5-0266/01 – 2001/0817(CNS))

The proposal is amended as follows:

Text proposed by the Kingdom of Belgium and the Kingdom of Sweden¹

Amendments by Parliament

Amendment 1
Recital 1a (new)

(1a) A proposal for the comprehensive reform of the instruments of police and judicial cooperation, including revision of the Europol Convention to bring it into line with the higher standards and methods of democratic control of the police forces of the Member States is to be submitted by the Commission by the end of 2001; that comprehensive reform should aim gradually to communitise those instruments, to strengthen judicial control by the Court of Justice and to fund those instruments through the Community budget;

Justification

It is in the interests of the European Union that the instruments of police and judicial cooperation should be reorganised as soon as possible.

¹ OJ C 176, 21.06.01, p. 26.

Amendment 2
Recital 2

(2) The effectiveness of the cooperation within the framework of the Europol Convention would be enhanced if Europol, within certain prioritised areas, could perform its tasks in respect of all aspects of international organised crime listed in the Annex to the Europol Convention,

(2) ***Pending such reform***, the effectiveness of the cooperation within the framework of the Europol Convention would be enhanced if Europol, within certain prioritised areas, could perform its tasks in respect of all aspects of international organised crime listed in the Annex to the Europol Convention,

Justification

The future reform must not preclude improvements in the functioning of Europol which are already feasible at this stage.

Amendment 3
Recital 2a (new)

2a. Prioritised areas should be defined on the basis of the continuous, decentralised collection of data on trends in crime in the territories of the Member States and it is therefore appropriate that the European Parliament and Eurojust should be consulted on the definition of the priorities,

Justification

Extending Europol's mandate to all the forms of organised international crime listed in the Annex to the Europol Convention may well waste Europol's energy unless prioritised areas of action are determined in the meantime on the basis of the trends in crime in the Union; the European Parliament and Eurojust ought in addition to be consulted on the fixing of those priorities for action.

Amendment 4
Article 1

Europol is hereby instructed to deal with the serious forms of international crime listed in the Annex to the Europol Convention.

Europol is hereby instructed to deal with the serious forms of international crime listed in the Annex to the Europol Convention. ***If the Council adopts framework decisions determining the constituent elements of individual criminal offences these shall replace the corresponding provisions of the Europol Convention and the annexes thereto.***

Justification

In order to maintain in the Union a clear, uniform legal framework of definitions of criminal offences laid down at European level, the framework decisions adopted by the Council must replace the corresponding provisions of the Europol Convention and the annexes thereto.

Amendment 5
Article 2, paragraph –1 (new)

-1. Europol shall, in close cooperation with the Member States, collect, on a continuous, decentralised basis, data on trends in international crime in the territories of the Member States. Those data shall be incorporated in the annual reports referred to in Article 28(10), first subparagraph of the Convention and special reports such as the report on terrorism.

Justification

The data on the trends in organised international crime collected in the Member States and required to enable Europol to define prioritised areas of action with full knowledge of the facts must be incorporated and analysed in the annual reports on the activities of Europol and in the special reports on specific aspects of international crime such as terrorism.

Amendment 6
Article 2, paragraph 1

1. On a proposal from the Management Board, the Council shall unanimously lay down which serious forms of international crime are to be given priority.

1. The Council shall, on a proposal from the Management Board and after consulting the European Parliament and Eurojust, decide by a two-thirds majority Europol's prioritised areas of action, taking into account the operational requirements of the Member States and the budgetary and staffing implications for Europol.

Justification

In determining Europol's prioritised areas of action, on the one hand a quicker procedure should be followed – a two-thirds majority in the Council instead of unanimity – and on the other the European Parliament and Eurojust should be involved and consulted. In addition, factors such as the operational requirements of the Member States and the budgetary and staffing implications for Europol should be taken into account.

Amendment 7
Article 2, paragraph 3

3. The general **report** on Europol's activities referred to in Article 28(10), first subparagraph, point (1) of the Europol Convention shall **make explicit reference to, and reflect, these priorities and their implementation.**

3. The general **reports** on Europol's activities referred to in Article 28(10), first subparagraph, point (1) of the Europol Convention shall **expressly refer to those priorities and shall reflect the situation with regard to the implementation of those priorities and expected developments in that respect during the following year. The reports shall be forwarded to the European Parliament with a view to the annual debate referred to in Article 39 of the EU Treaty and shall afterwards be published together with the opinions of the European Parliament and Eurojust and any observations and appraisals of individual Member States.**

Justification

The European Parliament and Eurojust should be consulted with regard to the determination of Europol's priorities for action.

Amendment 8
Article 3(1)

1. This Decision shall enter into force on **1 January 2002**.

1. This Decision shall enter into force on **1 March 2002**.

Justification

The Member States and Europol must be given more time to organise the exchange and analysis of data on international organised crime proposed in the previous amendments.

DRAFT LEGISLATIVE RESOLUTION

European Parliament legislative resolution 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 (9093/01 – C5-0266/01 – 2001/0817(CNS))

(Consultation procedure)

The European Parliament,

- having regard to the initiative of the Kingdom of Belgium and the Kingdom of Sweden (9093/2001¹),
 - having been consulted by the Council pursuant to Article 39(1) of the EU Treaty (C5-0266/01),
 - 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 (A5-0370/2001),
1. Approves the initiative of the Kingdom of Belgium and the Kingdom of Sweden as amended;
 2. Calls on the Council to alter the proposal accordingly;
 3. Calls on the Council to notify Parliament should it intend to depart from the text approved by Parliament;
 4. Asks to be consulted again if the Council intends to amend the initiative of the Kingdom of Belgium and the Kingdom of Sweden substantially;
 6. Instructs its President to forward its position to the Council and Commission and the Governments of the Kingdom of Belgium and of the Kingdom of Sweden.

¹ OJ C 176, 21.06.2001, p. 26.

2. LEGISLATIVE PROPOSAL

2. Initiative of the Kingdom of Sweden with a view to the adoption of a Council Act amending the Council Act of 12 March 1999 adopting the rules governing the transmission of personal data by Europol to third States and third bodies (8785/01 – C5-0218/01 – 2001/0807(CNS))

The proposal is amended as follows:

Text proposed by the Kingdom of Belgium and
the Kingdom of Sweden¹

Amendments by Parliament

Amendment 1 TITLE of the legislative proposal

Initiative of the Kingdom of Sweden with a view to the adoption of a Council Act amending the *Council Act of 12 March 1999* adopting the rules governing the transmission of personal data by Europol to third States and third bodies

Initiative of the Kingdom of Sweden with a view to the adoption of a Council Act amending the *acts* adopting the rules governing the transmission of personal data by Europol to third States and third bodies *or to European Union bodies*

Justification

This amendment is consistent with amendment 6 which also modifies the Act of the Management Board of Europol

Amendment 2 Recital –1 (new)

-1. A proposal for the comprehensive reform of the instruments of police and judicial cooperation, including revision of the Europol Convention to bring it into line with the higher standards and methods of democratic control of the police forces of the Member States is to be submitted by the Commission by the end of 2001; that comprehensive reform should aim gradually to communitise those

¹ OJ C 176, 21.06.01, p. 26.

instruments, to strengthen judicial control by the Court of Justice and to fund those instruments through the Community budget;

Justification

It is in the interests of the European Union that the instruments of police and judicial cooperation should be reorganised as soon as possible.

Amendment 3

Recital 1

(1) It is for the Council, acting unanimously, to adopt the general rules governing the transmission of data by Europol to third States or third bodies, taking into account the circumstances referred to in Article 18(3) of the Europol Convention.

(1) ***Pending such reform***, it is for the Council, acting unanimously, to adopt the general rules governing the transmission of data by Europol to third States or third bodies, taking into account the circumstances referred to in Article 18(3) of the Europol Convention.

Justification

The future reform must not preclude improvements in the functioning of Europol which are already feasible at this stage.

Amendment 4

Article 1, paragraph 2(b)a (new)

(b)a onward transmission agreements shall provide for the implementation of the safeguards laid down in Article 7 of this Decision;

Justification

The safeguards concerning the correction and deletion of personal data laid down in Article 7 of the Council Act of 12 March 1999 adopting the rules governing the transmission of

personal data by Europol to third States and third bodies, amended by the act under consideration, should also be applicable to the onward transmission of data.

Amendment 5
Article 1, paragraph 3

3) the following Article shall be added:

"Article 9a

Evaluation

As from **1 January 2005**, these rules shall be evaluated under the supervision of the Management Board, which shall obtain the opinion of the Joint Supervisory Body."

3) the following Article shall be added:

"Article 9a

Evaluation

As from **1 January 2003**, these rules shall be evaluated under the supervision of the Management Board, which shall obtain the opinion of the Joint Supervisory Body."

Justification

It is advisable to stipulate that the provisions under consideration should be evaluated at an earlier date.

Amendment 6
Article 1a (new)

Article 1a

Article 1(a) of the Act of the Management Board of Europol of 15 October 1998 laying down the rules governing Europol's external relations with European Union-related bodies is amended as follows:

***'For the purpose of these rules:
(a) 'European Union-related bodies' means the bodies referred to in Article 10(4)(1), (2) and (3) of the Europol Convention and EUROJUST;***

Justification

There should be direct links between Europol and Eurojust in order to strengthen the

cooperation established by the Treaty on European Union, as amended by the Treaty of Nice.

Amendment 7
Article 2

1. This Act shall *enter into force on the day following that of its adoption.*

This Act shall *be published in the Official Journal and shall enter into force 20 days after its publication.*

2. *It shall be published in the Official Journal.*

Justification

The convention that Council acts enter into force when they are adopted and not - at least - when they are published in the Official Journal is deplorable. One of the basic principles of law is that the law should be knowable and published, and neither Council initiatives nor initiatives of the Kingdom of Sweden should be exceptions to that principle.

DRAFT LEGISLATIVE RESOLUTION

European Parliament legislative resolution on the initiative of the Kingdom of Sweden with a view to the adoption of a Council Act amending the Council Act of 12 March 1999 adopting the rules governing the transmission of personal data by Europol to third States and third bodies (8785/01 – C5-0218/01 – 2001/0807(CNS))

(Consultation procedure)

The European Parliament,

- having regard to the initiative of the Kingdom of Sweden (8785/2001¹),
 - having been consulted by the Council pursuant to Article 39(1) of the EU Treaty (C5-0218/01),
 - 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 (A5-0370/2001),
1. Approves the initiative of the Kingdom of Sweden as amended;
 2. Calls on the Council to alter the proposal accordingly;
 3. Calls on the Council to notify Parliament should it intend to depart from the text approved by Parliament;
 4. Asks to be consulted again if the Council intends to amend the initiative of the Kingdom of Sweden substantially;
 5. Instructs its President to forward its position to the Council and Commission and the Government of the Kingdom of Sweden.

¹ OJ C 163, 6.6.2001, p.13.

EXPLANATORY STATEMENT

CONTENT OF THE INITIATIVES OF BELGIUM AND SWEDEN AND AMENDMENTS PROPOSED BY THE RAPPORTEUR

The two initiatives of Belgium and Sweden on which the European Parliament is being consulted relate to the extension of Europol's mandate to deal with the serious forms of international crime listed in the Annex to the Europol Convention and to the rules governing the transmission of personal data by Europol to Third States and third bodies.

As your rapporteur, and in view of the fact that owing to the legal limits of the acts under consideration it is impossible to propose more radical reforms in particular to the Europol Convention, I have put forward several amendments to improve those two proposals. The objective of the Council decision extending the mandate is to enhance the effectiveness of cooperation within the scope of the Europol Convention by giving Europol the means to carry out, in specified prioritised areas, its tasks in relation to all the aspects of organised international crime listed in the Annex to the Europol Convention. According to your rapporteur, for Europol to be more efficient, the Council must define prioritised areas of action, and that definition must be based on continuous, decentralised collection of data on the trends in crime in the territories of the Member States, taking into account the operational requirements of the latter and the budgetary and staffing implications for Europol and after consulting the European Parliament (amendments 1 and 4). In addition, Europol should act in close cooperation with the Member States, collect on a continuous, decentralised basis, data on trends in international crime in the territories of the Member States, and should incorporate these data in the annual reports referred to in Article 28(10), first subparagraph of the Convention and in the special reports such as that on terrorism (amendment 3). If Europol's task is to deal with the serious forms of international crime listed in the Annex to the Europol Convention, it is necessary to specify, for the purposes of legal consistency, that where the Council adopts framework decisions laying down the ingredients of individual offences, those decisions should replace the corresponding provisions in the Europol Convention and the annexes thereto (amendment 2). Finally, the general reports on Europol's activities must make express reference to those priorities, summing up the situation with regard to the implementation of them and outlining expected developments for the following year. To enable a more detailed and transparent debate on the crime situation in Europe, these reports should be forwarded to the European Parliament with a view to the annual debate referred to in Article 39 of the EU Treaty and then published together with the European Parliament's opinion and any observations and appraisals of individual Member States (amendment 5).

With regard to the second proposal, on the transmission of personal data, your rapporteur proposes to add that the safeguards in Article 7 of this decision should apply both to transmission agreements and to agreements for the onward transmission of data (amendment 1), to bring forward the evaluation of the proposed provisions from 2005 to 2003 (amendment 2) and to specify that the Act in question must be published in the Official Journal and should enter into force 20 days after its publication (amendment 3).

URGENT NEED FOR THE REFORM OF EUROPOL TO ENABLE DEMOCRATIC AND JUDICIAL CONTROL OF IT

Although the abovementioned amendments are necessary to ensure that the acts on which we are consulted are substantially improved, the European Parliament should not waste the opportunity to remind the Council and the Member States of its concerns and requests with regard to Europol.

Since the setting-up of Europol, the EP has pointed out the need to supervise it. The plan to increase Europol's powers to deal with the critical situation with regard to terrorism, the scandal involving a Europol official and the reluctance of the national police forces to transmit their data to Europol, as well as the creation of a group of national and European Members of Parliament urging the importance of increasing democratic control over Europol and its decisions within the area of justice, freedom and security have led the Council to request the Commission to draw up a communication on the democratic control of Europol by the end of the year. The Council has frequently discussed that problem and also the reform of the Convention. Commissioner Vitorino has in addition stated many times that he considered it appropriate to set up a joint committee composed of members of the national and European parliaments for the purpose of monitoring Europol. I shall give a straightforward list of some of the most controversial aspects of Europol:

(a) democratic control of Europol: democratic control of Europol is proving at present to be especially difficult, if not virtually non-existent, owing to several factors. In the first place, Europol is on the sidelines of the Union's structure, its legal basis being a Convention between the Member States of the Union. This makes it especially difficult to determine the rights and duties of Europol and of the institutions amongst themselves and gives rise to heated debates between the Parliament and the Commission on one side and the Council on the other. The problem of informing and consulting the EP (and the parliaments of the Member States) on acts concerning Europol is an example of this, with the result that the EP is consulted on an increase in the salaries of Europol officials but not on much more important documents such as for example Europol's work programme. Secondly, the EP has been denied direct powers of democratic control. It is maintained in some quarters that that control is exercised by the Member States through their representative on the management board as well as through the Ministers in the formation of the Council. It should be pointed out in this connection that, in a situation in which there is limited transparency and in which the national and European parliaments are given insufficient information, 15 checks may well be superficial or futile or block Europol or curb its efficiency and effectiveness.

(b) financial and budgetary control: Europol is funded by the national States and not by the Community budget; thus the EP and the Commission have no power of budgetary or financial control and cannot therefore either criticise or direct the activities of that body.

(c) judicial control: the Court of Justice has been denied full powers of judicial control over Europol. We should also note that Europol officials benefit from wide-ranging immunity protecting them with regard to the judicial control which can be exercised at national level.

(d) gradual increase in the mandate and powers of Europol: although Europol initially dealt with drug-related crime, the act under consideration widens the powers of Europol to

what is in essence all types of crime. The Council is also discussing whether to set up joint investigative teams, give Europol the power to call on the Member States to initiate criminal investigations, give the heads of Europol's national units a more important role, increase its powers to analyse files and open files, introduce cooperation between Europol and Eurojust, coordinate cooperation between Europol and the European Police Chiefs' Task Force, extend access to Europol's information system, give Europol access to the SIS, facilitate technical and operational support for Europol in on-the-spot operations, encourage better dissemination of data, enable personal data contained in analysis files to be kept for longer periods of time.

CONCLUSIONS

Although it is perhaps desirable to strengthen Europol – in all federal or confederal States there is a federal or confederal police office - on the other hand the observations made on the urgent need to reform Europol to enable democratic, financial and judicial control of it at Community level cannot be pushed into the background. To enable the EP to express its concerns and requests to the Council and the Commission at a time when they are preparing to take decisions enlarging Europol's powers and jurisdiction, your rapporteur proposes, in addition to the amendments on the two Acts proposed by Belgium and Sweden, several amendments to the proposal for a legislative resolution. The European Commission is requested to draw up a proposal for the reform of the instruments of police and judicial cooperation including revision of the Europol Convention to bring it into line with the higher standards and methods of democratic control of the police forces of the Member States. A reform of this kind should aim gradually to communitise those instruments, which would be funded by the Community budget, whilst the Court of Justice should have full powers of judicial control over Europol. The Council is requested to refrain from encouraging Europol to play an operative role until those reforms have been implemented.

Although the combination of the above factors and the lack of codecision powers on the part of the EP with regard to justice and home affairs (reducing it to a consultative body which cannot have any effect on the decisions taken or to be taken) might justify rejection of the two initiatives under consideration, which would make the Council and the Member States more aware of the urgent need to reform Europol, the adoption of the amendments which your rapporteur proposes may perform the function of clarifying and improving the initiatives under consideration and send the Council and the Member States a clear political message criticising the current situation and proposing several fundamental guidelines for reform.