

EUROPEAN PARLIAMENT

2004



2009

Session document

A6-0447/2007

15.11.2007

REPORT

on the proposal for a Council decision establishing the European Police Office
(EUROPOL)
(COM(2006)0817 – C6-0055/2007 – 2006/0310(CNS))

Committee on Civil Liberties, Justice and Home Affairs

Rapporteur: Agustín Díaz de Mera García Consuegra

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.

CONTENTS

	Page
DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION.....	5
EXPLANATORY STATEMENT.....	30
OPINION OF THE COMMITTEE ON BUDGETS.....	32
OPINION OF THE COMMITTEE ON CONSTITUTIONAL AFFAIRS.....	43
PROCEDURE	48

DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

**on the proposal for a Council decision establishing the European Police Office
(EUROPOL)
(COM(2006)0817 – C6-0055/2007 – 2006/0310(CNS))**

(Consultation procedure)

The European Parliament,

- having regard to the Commission proposal (COM(2006)0817),
 - having regard to Article 30(1)(b), Article 30(2) and Article 34(2)(c) of the EU Treaty,
 - having regard to Article 39(1) of the EU Treaty, pursuant to which the Council consulted Parliament (C6-0055/2007),
 - having regard to the Protocol incorporating the Schengen *acquis* into the framework of the European Union, pursuant to which the Council consulted Parliament,
 - having regard to Rules 93 and 51 of its Rules of Procedure,
 - having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs and the opinions of the Committee on Budgets and the Committee on Constitutional Affairs (A6-0447/2007),
1. Approves the Commission proposal as amended;
 2. Considers that the financial reference amount indicated in the legislative proposal must be compatible with the ceiling of heading 3a of the new multiannual financial framework (MFF) and with the provisions of Point 47 of the Interinstitutional Agreement of 17 May 2006¹ between the European Parliament, the Council and the Commission on budgetary discipline and sound financial management (IIA);
 3. Recalls that the opinion delivered by the Committee on Budgets does not pre-empt the outcome of the procedure laid down in Point 47 of the IIA, which applies to the setting up of the European Police Office;
 4. Calls on the Commission to alter its proposal accordingly, pursuant to Article 250(2) of the EC Treaty;
 5. Calls on the Council to notify Parliament if it intends to depart from the text approved by Parliament;
 6. Calls on the Council to consult Parliament again if it intends to amend the Commission proposal substantially;

¹ OJ C 139, 14.6.2006, p. 1.

7. Calls on the Council to consult Parliament again within the framework of the draft Treaty of Lisbon if the Council decision establishing Europol is not adopted by June 2008;
8. Instructs its President to forward its position to the Council and Commission.

Text proposed by the Commission

Amendments by Parliament

Amendment 1
Citation 1 a (new)

Having regard to Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities¹ (Financial Regulation), and in particular Article 185 thereof,

¹ OJ L 248, 16.9.2002, p. 1. Regulation as amended by Regulation (EC, Euratom) No 1995/2006 (OJ L 390, 30.12.2006, p. 1).

Justification

Europol is set up as a European Union agency. This has to be reflected in the legal bases referred to in the Decision.

Amendment 2
Citation 1 b (new)

Having regard to the Interinstitutional Agreement of 17 May 2006 between the European Parliament, the Council and the Commission on budgetary discipline and sound financial management¹, and in particular Point 47 thereof,

¹ OJ C 139, 14.6.2006, p. 1.

Justification

Europol is set up as a European Union agency. This has to be reflected in the legal bases referred to in the Decision.

Amendment 3
Recital 4 a (new)

(4a) The Council has not yet adopted the Framework Decision on Data Protection in the field of police and judicial cooperation in criminal matters. The entry into force of the Framework Decision is crucial in order for Europol to comply with its mandate within a legal framework which fully guarantees the data protection of European citizens. It is therefore imperative that the Council adopt the Framework Decision as soon as possible.

Amendment 4
Recital 4 b (new)

(4b) Parliament, in its "recommendation to the Council on Europol: reinforcing parliamentary controls and extending powers"¹, of 13 April 1999, called for the incorporation of Europol into the institutional framework of the European Union and its being subject to democratic scrutiny by Parliament.

¹ OJ C 219, 30.7.1999, p. 101.

Amendment 5
Recital 4 c (new)

(4c) Parliament, in its "recommendation to the Council on the future development of Europol and its automatic incorporation into the institutional system of the European Union"¹, of 30 May 2002, and in its "recommendation to the Council on the future development of Europol"², of 10 April 2003, called for the placing of Europol on a Community footing.

¹ OJ C 187 E, 7.8.2003, p. 144.

Amendment 6

Recital 5

(5) Establishing Europol as an agency of the European Union, funded from the general budget of the European *Communities* will enhance the role of the European Parliament in the control over Europol, through the involvement of the European Parliament in the adoption of the budget.

(5) Establishing Europol as an agency of the European Union, funded from the general budget of the European *Union*, will enhance the role of the European Parliament in the control ***of, and democratic scrutiny*** over, Europol, through the involvement of the European Parliament in the adoption of the budget, ***including the establishment plan, and in the discharge procedure.***

Justification

Parliament's role in adopting the agency's establishment plan and in granting discharge to the agency should be duly noted.

Amendment 7

Recital 6 a (new)

(6a) Establishing Europol calls for an interinstitutional agreement which lays down the basic conditions governing the European regulatory agencies in order to structure existing and future agencies in a way that promotes clarity, transparency and legal certainty.

Amendment 8

Recital 8 a (new)

(8a) Following the extension of Europol's operational powers, some improvements are still needed as regards its democratic responsibility.

Amendment 9
Recital 13

(13) There is a need for a data protection officer who should be responsible for ensuring, in an independent manner, lawfulness of data processing and compliance with the provisions of this Decision concerning the processing of personal data, including the processing of personal data on Europol staff which is protected by Article 24 of Regulation (EC) No 45/2001.

(13) There is a need for a data protection officer who should be responsible for ensuring, in an independent manner, lawfulness of data processing and compliance with the provisions of this Decision concerning the processing of personal data, including the processing of personal data on Europol staff which is protected by Article 24 of Regulation (EC) No 45/2001. ***In carrying out his tasks, the data-protection officer should cooperate with the data-protection officers appointed under Community law.***

Justification

In order to ensure the cooperation with European bodies as underlined in recital 16 of the current proposal and to guarantee an adequate level of data protection in conformity with Regulation No 45/2001, it would be useful for the Europol Data-Protection Officer to take part in the existing DataProtection Officer network in order to ensure an approach on data protection issues common to the approach taken by the Community bodies.

Amendment 10
Recital 14

(14) In addition to simplifications of the provisions concerning existing data processing systems, Europol's possibilities for creating and managing other data processing tools in support of its tasks should be ***widened***; such data-processing tools should be established and maintained in accordance with general principles of data protection, ***but also*** in accordance with detailed rules to be established by the Council.

(14) In addition to simplifications of the provisions concerning existing data processing systems, Europol's possibilities for creating and managing other data processing tools in support of its tasks should be ***allowed***; such data-processing tools should be established and maintained in accordance with general principles of data protection ***enshrined in EC law and in the Council of Europe's Convention No 108 of 28 January 1981 on the protection of individuals with regard to automatic processing of personal data and*** in accordance with detailed rules to be established by the Council, ***in consultation with the European Parliament;***

Amendment 11
Recital 19

(19) Europol's possibilities for co-operating with third countries and bodies should be rationalised in order to ensure consistency with the general policy of the Union in this respect, and through new provisions on how such co-operation is to take place in the future.

(19) Europol's possibilities for co-operating with third countries and bodies should be rationalised in order to ensure consistency with the general policy of the Union in this respect, and ***to guarantee that third countries and bodies provide for an adequate level of protection of personal data***, through new provisions on how such co-operation is to take place in the future ***to be adopted by the Council, after consulting the European Parliament***.

Amendment 12
Article 1, paragraph 1

1. This Decision establishes a European Police Office, hereinafter referred to as 'Europol', as an agency of the Union. Europol shall have its seat in The Hague, the Netherlands.

1. This Decision establishes a European Police Office, hereinafter referred to as 'Europol', as an agency of the Union. ***It is an agency set up in accordance with Article 185 of the Financial Regulation and Point 47 of the IIA***. Europol shall have its seat in The Hague, the Netherlands.

Justification

See Amendment 3

Amendment 13
Article 5, paragraph 1, point (a)

(a) the collection, storage, processing, analysis and exchange of information and intelligence forwarded by the authorities of the Member States or third countries or other public or private entities;

(a) the collection, storage, processing, analysis and exchange of information and intelligence forwarded by the authorities of the Member States or third countries or other public or private entities; ***when the information emanates from private parties, it shall be lawfully collected and processed before being forwarded to Europol in accordance with national legislation implementing Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data¹, and access by Europol shall be***

allowed only on a case-by-case basis, for specified purposes and under judicial control in the Member States; additional safeguards shall be laid down by Europol after consultation of the European Data-Protection Supervisor and the Joint Supervisory Body;

¹ OJ L 281, 23.11.1995, p. 31. Directive as amended by Regulation (EC) No 1882/2003 (OJ L 284, 31.10.2003, p. 1).

Amendment 14
Article 6, paragraph 2

2. In those cases where a joint investigation team is set up to deal with cases of counterfeiting of the Euro currency, a Europol official may be appointed to direct the investigation, under the direct responsibility of the leader of the team. Where there is a difference of opinion between the Europol official thus appointed and the team leader, the latter's opinion shall prevail.

2. In those cases where a joint investigation team is set up to deal with cases of counterfeiting of the Euro currency ***or with the tasks mentioned in Article 5(2)***, a Europol official may be appointed to direct the investigation, under the direct responsibility of the leader of the team. Where there is a difference of opinion between the Europol official thus appointed and the team leader, the latter's opinion shall prevail.

Justification

Since Article 5(2) allows Europol to play a special role in the 'the coordination of investigative actions into criminal activities committed using the Internet, in particular with respect to terrorism-related offences and the distribution of child pornography and other illegal material, as well as monitoring the Internet to assist in the identification of such criminal activities and the persons who have committed them', Europol shall also have the possibility, in the field of these tasks, of leading a Joint Investigation Team under the same conditions as for the counterfeiting of the euro.

Amendment 15
Article 8, paragraph 2

2. The national unit shall be the liaison body between Europol and the competent national authorities. However, Member States may allow direct contacts between designated competent authorities and Europol subject to conditions determined

2. The national unit shall be the ***only*** liaison body between Europol and the competent national authorities. However, Member States may allow direct contacts between designated competent authorities and Europol subject to conditions

by the Member State in question, **which may include** prior involvement of the national unit.

determined by the Member State in question, **including** prior involvement of the national unit.

The national unit shall at the same time receive from Europol any information exchanged in the course of direct contacts between Europol and designated competent authorities. Relationships between the national unit and the competent authorities shall be governed by national law and, in particular, the applicable national constitutional requirements.

Justification

It should be obvious, but it is worth reinforcing the idea that when information is exchanged between a national unit and a Member State's designated competent authorities, national law shall apply.

Amendment 16

Article 9, paragraph 2, subparagraph 2

The bilateral exchanges provided for in point (d) of the first subparagraph may also cover crimes outside of the competence of Europol, as far as allowed under national law.

The bilateral exchanges provided for in point (d) of the first subparagraph may also cover crimes outside of the competence of Europol, as far as allowed under national law. ***In this case, Europol shall not be held responsible for the content of any of the information exchanged.***

Justification

Europol cannot be held accountable for the exchange of information concerning the prosecution of crimes which are outside its remit while it is acting as a means rather than the main player in the prosecution of such crimes.

Amendment 17

Article 10, paragraph 2

2. Europol may process data for the purpose of determining whether such data are relevant for its tasks, and can be included in

2. Europol may process data for the purpose of determining whether such data are relevant for its tasks, and can be included in one of its information systems. ***In such a***

one of its information systems.

case, the data shall be processed for the sole purpose of determining their relevance.

Amendment 18
Article 10, paragraph 3

(3) Whenever Europol intends to establish a system for processing personal data other than the Europol Information System referred to in Article 11 or the Analysis Work Files referred to in Article 14, the Council, acting by a qualified majority after consulting the European Parliament, shall determine the conditions under which Europol may do so. Such conditions shall in particular relate to the access to and usage of the data, as well as time limits for the storage and deletion of the data, having due regard to the principles referred to in Article 26.

(3) Whenever Europol intends to establish a system for processing personal data other than the Europol Information System referred to in Article 11 or the Analysis Work Files referred to in Article 14, the Council, acting by a qualified majority after consulting the European Parliament, shall determine the conditions under which Europol may do so. Such conditions shall in particular relate to the access to and usage of the data, as well as time limits for the storage and deletion of the data, having due regard to the principles referred to in Article 26. ***The Joint Supervisory Body of Europol and the European Data-Protection Supervisor shall be consulted before the adoption of such a decision by the Council.***

Justification

The processing of personal data outside the Europol Information System or the Analysis Work Files must protect the legitimate interests of data subjects and therefore the Joint Supervisory Body of Europol and the European Data Protection Supervisor must be consulted (see opinion of the EDPS on COM (2006) 817 final, Nos. 18, 55).

Amendment 19
Article 10, paragraph 5

5. Europol shall make every effort to ensure that its data processing systems are interoperable with the data processing systems in the Member States, and in particular with the data processing systems in use by the Community and Union related bodies with which Europol may establish relations in accordance with Article 22, through following best practice and using open standards.

5. Europol shall make every effort to ensure that its data processing systems are interoperable with the data processing systems in the Member States, and in particular with the data processing systems in use by the Community and Union related bodies with which Europol may establish relations in accordance with Article 22, through following best practice and using open standards. ***Interconnection shall be authorised following a decision to that effect by the Council, which shall be taken after consultation with the Europol officer***

responsible for data protection and with the Joint Supervisory Body and shall lay down the rules and conditions, in particular as regards the need to apply interconnection and the purposes for which the personal data are to be used.

Amendment 20
Article 11, paragraph 1

1. Europol shall maintain a Europol Information System. The Europol Information System shall be directly accessible for consultation by national units, liaison officers, the Director, the Deputy Directors and duly empowered Europol officials.

1. Europol shall maintain a Europol Information System. The Europol Information System shall be directly accessible for consultation by national units, liaison officers, the Director, the Deputy Directors and duly empowered Europol officials. ***Direct access by the national units to the information system in respect of the persons referred to in Article 12 (1)(b) shall be restricted solely to the identity details listed in Article 12(2). If needed for a specific enquiry, the full range of data shall be accessible to the units via the liaison officers.***

Justification

Data of people in respect of whom there are serious grounds under national law for believing that they will commit criminal offences for which Europol is competent can not be treated as convicted criminals. Specific safeguards should be provided for this category of people as laid down in Article 7(1) of the current Europol Convention.

Amendment 21
Article 12, paragraph 1, point (b)

(b) persons who there are serious grounds under national law of the Member State concerned to believe will commit criminal offences in respect of which Europol is competent.

(b) persons who there are ***factual indications or*** serious grounds under national law of the Member State concerned to believe will commit criminal offences in respect of which Europol is competent.

Amendment 22
Article 12, paragraph 4 a (new)

4a. Special categories of data concerning racial or ethnic origin, political opinions, religious or philosophical beliefs, party or trade union membership, sexual orientation or health shall not be processed, save when absolutely necessary and proportionate for the purpose of a specific case and subject to specific safeguards.

Amendment 23
Article 19, paragraph 1

1. Personal data retrieved from any of Europol's data processing files shall be transmitted or used only by the competent authorities of the Member States in order to prevent and combat crimes in respect of which Europol is competent, and to combat other serious forms of crime. Europol shall use the data only for the performance of its tasks.

1. Personal data retrieved from any of Europol's data processing files shall be transmitted or used only by the competent authorities of the Member States **only for the purposes for which they have been collected and for purposes compatible therewith** in order to prevent and combat crimes in respect of which Europol is competent, and to combat other serious forms of crime. Europol shall use the data only for the performance of its tasks.

Amendment 24
Article 20 paragraph 1

(1) Data in data files shall be held by Europol only for as long as is necessary for the performance of its tasks. **The** need for continued storage shall be reviewed no later than **three years** after the input of data. Review of data stored in the information system and its deletion shall be carried out by the inputting unit. Review of data stored in other Europol data files and their deletion shall be carried out by Europol. Europol shall automatically inform the Member States three months in advance of the expiry of the time limits for reviewing the storage of data.

(1) Data in data files shall be held by Europol only for as long as is necessary for the performance of its tasks. **Notwithstanding Article 10(3), the** need for continued storage shall be reviewed **and documented at least every two years** after the input of data. Review of data stored in the information system and its deletion shall be carried out by the inputting unit. Review of data stored in other Europol data files and their deletion shall be carried out by Europol. Europol shall automatically inform the Member States three months in advance of the expiry of the time limits for reviewing the storage of data.

Justification

The period according to which the storage of data shall be reviewed is too long. The data should also be subject to a regular review. Two years, therefore, seems a more proportionate interval between data reviews. Moreover (see the Joint Supervisory Body's opinion of 07/07, p. 16), the amendment includes a linking clause with Article 10(3), which allows for the establishment of other systems than those defined in the Decision, since the conditions laid down by the Council in this respect may provide for shorter intervals between reviews.

Amendment 25

Article 21

In so far as Europol is entitled under European Union, international or national legal instruments to gain computerised access to data from other information systems, either of a national or an international nature, Europol may retrieve personal data by such means if this is necessary for the performance of its tasks. The applicable provisions of such Union, international or national legal instruments shall govern the access to and use of this data by Europol, in so far as they provide for stricter rules on access and usage than this Decision. Europol may not use such data in contravention of this Decision.

In so far as Europol is entitled under European Union, international or national legal instruments to gain computerised access to data from other information systems, either of a national or an international nature, Europol may retrieve personal data by such means if this is necessary for the performance of its tasks ***only on a case-by-case basis if and in so far as*** this is necessary for ***and proportionate to*** the performance of its tasks ***and under strict conditions laid down by Europol after consultation of the European Data-Protection Supervisor and the Joint Supervisory Body.*** The applicable provisions of such Union, international or national legal instruments shall govern the access to and use of this data by Europol, in so far as they provide for stricter rules on access and usage than this Decision. Europol may not use such data in contravention of this Decision.

Justification

Article 21 allows for access that is much too wide which is not necessary for the tasks of Europol.

Amendment 26

Article 22, paragraph 1, point (d a) (new)

(da) the relevant departments of the Secretary-General of the Council and the Joint Situation Centre of the European Union.

Justification

The Joint Situation Centre plays a key role in fighting certain numbers of crimes (such as terrorism) for which Europol is also competent. For the sake of consistency and with the objective of increasing the cooperation with all the relevant bodies existing at the EU level, it is necessary for Europol and the SitCen to establish and maintain close cooperation.

Amendment 27

Article 22, paragraph 5 a (new)

5a. Where personal data are forwarded by Community institutions or bodies, Europol shall be regarded as a Community body within the meaning of Article 7 of Regulation (EC) No 45/2001.

Justification

When Europol is processing personal data originating from Community bodies it should be treated as a Community body and therefore be subject to Regulation No.45/2001¹, which applies to all Community bodies when processing personal data. This will avoid creating uncertainty and it will also be consistent with the idea inherent in the current proposal of bringing the position of Europol more into line with institutions and bodies under the EC Treaty.

Amendment 28

Article 24, paragraph 1, introductory sentence

1. Europol may under the conditions laid down in paragraph 4 communicate personal data which it holds to the third bodies referred to in Article 23(1), where:

1. *In very exceptional situations and on a case-by-case basis*, Europol may under the conditions laid down in paragraph 4 communicate personal data which it holds to the third bodies referred to in Article 23(1), where:

Justification

Data transfer to third countries and international organisations must remain an exception and additional safeguards are needed for such transfer.

¹ Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.01.2001, p.1).

Amendment 29
Article 24, paragraph 2

2. By way of derogation from paragraph 1, Europol may communicate personal data which it holds to the third bodies referred to in Article 23(1) under the conditions laid down in paragraph 4 where the Director of Europol considers the transmission of the data to be absolutely necessary to safeguard the essential interests of the Member States concerned within the scope of Europol's objectives or in the interests of preventing imminent danger associated with crime or terrorist offences. The Director of Europol shall in all circumstances consider the data-protection level applicable to the body in question with a view to balancing this data-protection level with those interests.

2. By way of derogation from paragraph 1, Europol may communicate personal data ***on a case-by-case basis*** which it holds to the third bodies referred to in Article 23(1) under the conditions laid down in paragraph 4 where the Director of Europol considers the transmission of the data to be absolutely necessary to safeguard the essential interests of the Member States concerned within the scope of Europol's objectives or in the interests of preventing imminent danger associated with crime or terrorist offences. The Director of Europol shall in all circumstances consider ***the level of respect for human rights, democracy and the rule of law in the third country to which data could be transferred, the purposes for which the data are used***, the data-protection level applicable to the body in question with a view to balancing this data-protection level with those interests, ***as well as the degree of reciprocity in the exchange of information.***

Amendment 30
Article 25, paragraph 2

2. The Management Board shall determine the implementing rules governing the relations of Europol with the Community and Union related bodies and agencies referred to in Article 22, and for the exchange of personal data between Europol and such bodies and agencies. The Management Board shall consult the joint supervisory body prior to taking its decision.

2. The Management Board shall determine the implementing rules governing the relations of Europol with the Community and Union related bodies and agencies referred to in Article 22, and for the exchange of personal data between Europol and such bodies and agencies. The Management Board shall consult the joint supervisory body ***and the European Data-Protection Supervisor*** prior to taking its decision.

Amendment 31
Article 26,

Without prejudice to specific provisions of this Decision, Europol shall apply the principles of the Council Framework

Without prejudice to specific provisions of this Decision ***and to the need to maintain the safeguards provided by the Europol***

Decision 2007/XX/JHA on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters in the collection, processing and usage of personal data.. Europol shall observe these principles in the collection, processing and utilization of personal data, included in respect of non-automated data held in the form of data files, i.e. any structured set of personal data accessible in accordance with specific criteria.

Convention, Europol shall apply the principles of the Council Framework Decision 2007/XX/JHA on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters in the collection, processing and usage of personal data.. Europol shall observe these principles in the collection, processing and utilization of personal data, included in respect of non-automated data held in the form of data files, i.e. any structured set of personal data accessible in accordance with specific criteria.

Justification

It is necessary to maintain the provisions of the Convention on Europol on data protection which contain stronger safeguards compared with the draft Framework Decision on data protection in the third pillar.

Amendment 32 Article 27, paragraph 1

1. Europol shall appoint a Data Protection Officer, who shall be a member of the staff. He shall be under the direct authority of the Management Board. In the performance of his duties, he shall take instructions from no-one.

1. Europol shall appoint an **independent** Data Protection Officer, who shall be a member of the staff. He **or she** shall be under the direct authority of the Management Board. In the performance of his **or her** duties, he **or she** shall take instructions from no-one.

Amendment 33 Article 27, paragraph 5

5. Further implementing rules concerning the Data Protection Officer shall be adopted by the Management Board. The implementing rules shall in particular concern selection and dismissal, tasks, duties **and** powers of the Data Protection Officer.

5. Further implementing rules concerning the Data Protection Officer shall be adopted by the Management Board. The implementing rules shall in particular concern selection and dismissal, tasks, duties, powers **and safeguards of the independence** of the Data Protection Officer.

Justification

In order to guarantee the independence of the Data protection Officer, specific safeguards of independence should be adopted in the framework of the implementing measures.

Amendment 34 Article 29, paragraph 4

4. Access to personal data shall be denied if:

- (a) ***such access might jeopardise one of Europol's activities;***
- (b) ***such access might jeopardise any national investigation which Europol is assisting;***
- (c) ***such access might jeopardise the rights and freedoms of third parties.***

4. Access to personal data shall be denied ***only if such refusal is necessary to:***

- (a) ***enable Europol to fulfil its activities properly;***
- (b) ***guarantee that any national investigation which Europol is assisting will not be jeopardised;***
- (c) ***protect the rights and freedoms of third parties.***

Justification

The wording of the Commission proposal does not fully guarantee the right of access. Exceptions to this right can only be accepted if this is necessary in order to protect another fundamental interest. Therefore a stricter wording seems appropriate to protect the fundamental nature of the right to access.

Amendment 35 Article 29, paragraph 5

5. Europol shall consult the competent law enforcement authorities of the Member States concerned before deciding whether to grant access. Access to data entered in the Analysis Work Files shall be conditional upon the consensus of Europol and the Member States participating in the analysis and the consensus of the Member State(s) directly concerned by the communication of such data. In case a Member State objects to give access to personal data, it shall notify its refusal and the grounds thereof to Europol.

5. As a general principle, exercise of the right of access shall not be denied. Exceptions to that rule may only be accepted if necessary in order to protect another fundamental right. Europol shall consult the competent law enforcement authorities of the Member States concerned before deciding whether to grant access. Access to data entered in the Analysis Work Files shall be conditional upon the consensus of Europol and the Member States participating in the analysis and the consensus of the Member State(s) directly concerned by the communication of such data. In case a Member State objects to give access to personal data, it shall notify its

refusal and the grounds thereof to Europol.

Justification

Idem

Amendment 36
Article 29, paragraph 6

6. If one or more Member States or Europol have objections to an individual obtaining access to data concerning him, Europol shall notify the person concerned that it has carried out the checks, without giving any information which might reveal to him whether or not personal data concerning him are processed by Europol.

6. If one or more Member States or Europol have objections to an individual obtaining access to data concerning him, Europol shall notify the person concerned that it has carried out the checks, without giving any information which might reveal to him whether or not personal data concerning him are processed by Europol. ***The data controller shall be obliged to state the reasons for a refusal of access, in such a way that the application of the exception may be effectively controlled in conformity with the Council of Europe Council of Ministers' Recommendation No R (87) 15 of 17 September 1987 regulating the use of personal data in the police sector.***

Justification

Idem

Amendment 37
Article 36, paragraph 8, point (c)

(c) adopt the implementing rules applicable to Europol staff, on a proposal from the Director and after ***seeking*** agreement from the Commission;

(c) adopt the implementing rules applicable to Europol staff, on a proposal from the Director and after agreement from the Commission;

Justification

The implementing rules applicable to Europol staff have to be agreed by the Commission.

Amendment 38
Article 36, paragraph 9

9. The Management Board shall adopt each

9. The Management Board shall adopt each

year:

(a) the draft budget estimate **and the preliminary draft budget** to be submitted to the Commission, including the establishment plan, **and the final budget**;

(b) a work programme for Europol's future activities taking into account Member States' operational requirements **and budgetary and staffing implications for Europol**, after the Commission has delivered an opinion;

(c) a general report on Europol's activities during the previous year.

These documents shall **be submitted to the Council for endorsement. They shall also be forwarded by the Council** to the European Parliament **for information**.

year, **after endorsement by the Council**:

(a) the draft budget estimate to be submitted to the Commission, including the **draft** establishment plan;

(aa) Europol's budget and establishment plan, after authorisation by the budgetary authority;

(b) a work programme for Europol's future activities taking into account, **as far as possible**, Member States' operational requirements **in accordance with the financial and human resources available**, after the Commission has delivered an opinion;

(c) a general report on Europol's activities during the previous year, **comparing, in particular, the results achieved with the objectives of the annual work programme**.

These documents shall be forwarded to the European Parliament.

Justification

In this description of the management board's responsibilities it should be clarified that the board can only adopt the budget of the agency, including its establishment plan, after authorisation by the budgetary authority. Some other clarifications regarding the work programme and the annual report also seem necessary. As is the case with other agencies, all documents of this kind should be transmitted directly to Parliament.

Amendment 39

Article 36, paragraph 9, subparagraph 2

These documents shall be submitted to the Council for endorsement. **They shall also be forwarded by the Council** to the European Parliament **for information**.

These documents shall be submitted to the Council for endorsement, **and** to the European Parliament, **which shall have the opportunity to examine them as appropriate, where necessary in association with national parliaments**.

Amendment 40

Article 37, paragraph 1

1. Europol shall be headed by a Director appointed by the Council, acting by a qualified majority, from a list of at least three candidates presented by the Management Board, for a four-year period extendable once.

1. Europol shall be headed by a Director appointed by the Council, acting by a qualified majority ***after consulting the European Parliament***, from a list of at least three candidates presented by the Management Board, for a four-year period extendable once.

Justification

The appointment and the dismissal of the Director of Europol should be carried out in the same way. In order to ensure that the Europol Director is more democratically accountable and that the current decision is consistent, the European Parliament should be consulted not only for the dismissal but also for the appointment of its Director.

Amendment 41

Article 37, paragraph 4, point (g a) (new)

(ga) the implementation of effective monitoring and evaluation procedures relating to Europol's performance in terms of achieving its objectives.

Justification

The Director's responsibility for monitoring and evaluating the performance of EUROPOL should also be included in the task list for this office.

Amendment 42

Article 38, paragraph 5 a (new)

5a. Regulation (EC) No 45/2001 shall apply to the processing of personal data relating to Europol staff.

Justification

When processing personal data of Europol staff, Regulation No 45/2001 should apply in order to prevent any form of discrimination. This regulation in reference to the treatment of Europol staff's personal data is mentioned in the 12th recital of the current proposal. However, a normative provision like the one introduced by this amendment should be contained in the text rather than in a recital, which is not binding in nature.

Amendment 43
Article 41, paragraph 1

1. The revenues of Europol shall consist, without prejudice to other types of income, of a subsidy from the Community entered in the general budget of the European Union (Commission section) as from 1 January 2010.

1. The revenues of Europol shall consist, without prejudice to other types of income, of a subsidy from the Community entered in the general budget of the European Union (Commission section) as from 1 January 2010. ***The financing of Europol is subject to an agreement by the budgetary authority as foreseen by the IIA.***

Justification

Article 47 of the IIA of 17 May 2006 stipulates that "without prejudice to the legislative procedures governing the setting up of the agency, the two arms of the budgetary authority commit themselves ... to arrive at a timely agreement on the financing of the agency". It is necessary to note in this place that, notwithstanding the stage legislative procedures have reached, an agreement on the financing of Europol will also have to be achieved.

Amendment 44
Article 41, paragraph 3

3. The Director shall draw up a draft estimate of the revenues and expenditure of Europol for the following financial year and shall forward it to the Management Board together with a ***provisional*** establishment plan. The establishment plan shall consist of posts of a permanent or temporary nature and a reference to national experts seconded, and shall state the number, grade and category of staff employed by Europol for the financial year in question.

3. The Director shall draw up a draft estimate of the revenues and expenditure of Europol for the following financial year and shall forward it to the Management Board together with a ***draft*** establishment plan. The ***draft*** establishment plan shall consist of posts of a permanent or temporary nature and a reference to national experts seconded, and shall state the number, grade and category of staff employed by Europol for the financial year in question.

Justification

It has to be made clear that the establishment plan can only become final after authorisation by the budgetary authority.

Amendment 45
Article 41, paragraph 6

6. The estimate shall be forwarded by the Commission to the European Parliament, and the Council (hereinafter referred to as the budgetary authority) together with the preliminary draft budget of the European

6. The estimate shall be forwarded by the Commission to the European Parliament, ***which shall have the opportunity to examine it as appropriate according to its competences***, and the Council (hereinafter

Union.

referred to as the budgetary authority) together with the preliminary draft budget of the European Union.

Amendment 46
Article 42, paragraph 8 a (new)

8a. The Director shall submit to the European Parliament, at the latter's request, any information required for the smooth application of the discharge procedure for the financial year in question, as laid down in Article 146(3) of the Financial Regulation.

Justification

Some strengthening of the agency's director's obligation to cooperate in the discharge procedure seems appropriate, as it is traditionally included in other agencies' founding regulations.

Amendment 47
Article 42, paragraph 9

9. ***Upon a recommendation from the Council***, the European Parliament shall, before 30 April of year n + 2, give a discharge to the Director of Europol in respect of the implementation of the budget for year n.

9. The European Parliament, ***taking into account a recommendation from the Council acting by a qualified majority***, shall, before 30 April of year n + 2, give a discharge to the Director of Europol in respect of the implementation of the budget for year n.

Justification

The recommendation from the Council is not a prerequisite for Parliament's rights in the discharge procedure.

Amendment 48
Article 43

The financial rules applicable to Europol shall be adopted by the Management Board after having consulted the Commission. They may not depart from Regulation (EC, Euratom) No 2343/2002 of 23 December 2002, unless ***necessary*** for Europol's operation. The prior consent of the Commission shall be required for the

The financial rules applicable to Europol shall be adopted by the Management Board after having consulted the Commission. They may not depart from Regulation (EC, Euratom) No 2343/2002 of 23 December 2002, unless ***specifically required*** for Europol's operation. The prior consent of the Commission shall be required for the

adoption of any rules which derogate from the Regulation (EC, Euratom) No 2343/2002. The budgetary authority shall be informed of these derogations.

adoption of any rules which derogate from Regulation (EC, Euratom) No 2343/2002. The budgetary authority shall be informed of these derogations.

Justification

Derogations from Regulation No 2343/2002 should be kept to an absolute minimum. The agency has to prove beyond any doubt that such derogation is the only way to guarantee its proper functioning within the limits of its founding decision.

Amendment 49
Article 44, paragraph 1

The Director will establish a monitoring system in order to collect indicators of the effectiveness and efficiency of the duties performed within Europol.

The Director will establish a monitoring system in order to collect indicators of the effectiveness and efficiency of the duties performed within Europol. ***The Director shall report annually to the Management Board on the results of this monitoring.***

Justification

The Management Board should be informed regularly of the results of the monitoring exercise to enable it to react promptly to any problems.

Amendment 50
Article 44, paragraph 4 a (new)

The Chairman of the Management Board or the Director of Europol shall present Europol's priorities for the coming year before a joint committee comprising Members of the European Parliament and members of the national parliaments in order to guarantee a democratic debate with civil society and a better control over its activities.

Justification

Responsibility and accountability are two sides of the same coin. Europol's increasing role in the fight against organised crime and terrorism should be carried on in a way that will guarantee transparency and democratic control. Only in this way will the results of Europol's activities be recognised by civil society. In that sense a joint Committee made up of European and national parliamentarians will be welcome.

Amendment 51
Article 45

On the basis of a proposal by the Director, and not later than six months after this Decision is applicable, the Management Board shall adopt rules concerning access to Europol documents, taking into account the principles and limits set out in Regulation (EC) No 1049/2001 of the European Parliament and of the Council.

On the basis of a proposal by the Director, and not later than six months after this Decision is applicable, the Management Board, **after consulting the European Parliament**, shall adopt rules concerning access to Europol documents, taking into account the principles and limits set out in Regulation (EC) No 1049/2001 of the European Parliament and of the Council.

Justification

Taking into account that Regulation 1049/2001 was adopted under the codecision procedure, the European Parliament should at least be consulted on the adoption of rules concerning access to documents.

Amendment 52
Article 47

The chairman of the Management Board and the Director **may** appear before the European Parliament to discuss **general** questions relating to Europol.

The chairman of the Management Board and the Director **shall** appear before the European Parliament **on request** to discuss **any** questions relating to Europol.

Justification

For the sake of improving the democratic control of Europol by the European Parliament, the chairman of the Management Board, the Director and the Deputy Directors shall appear in front of the Parliament at its request. Moreover, the aim of the discussion should be related to any questions on Europol, not just to general questions.

Amendment 53
Article 56, paragraph 1

1. By way of derogation from Article 38, all employment contracts concluded by Europol, as established by the Europol Convention before the entry into force of this Decision will be honoured.

1. By way of derogation from Article 38, all employment contracts concluded by Europol, as established by the Europol Convention before the entry into force of this Decision, will be honoured. **The possible additional staffing cost generated by this derogation will be taken into account in the agreement on the financing of Europol to be reached according to Point 47 of the IIA.**

Justification

The indicative financial reference amount as also used in the Commission's financial programming is the basis on which the budgetary authority will decide on the financing of the agency according to Point 47 IIA. If the provision to honour employment contracts concluded by Europol should lead to any deviation from the financial reference amount currently indicated in the Commission proposal this will have to be taken into account in the negotiations of the budgetary authority on the financing of the agency.

Amendment 54

Article 56, paragraph 2

2. All members of staff under contracts as referred to in paragraph 1 shall be offered the possibility to conclude contracts under Article 2(a) of the Conditions of Employment of other Servants of the Communities laid down in Regulation (EEC, Euratom, ECSC) No 259/68 at the various grades as set out in the establishment plan. To that end an internal selection process limited to staff employed by Europol before the date of application of this Decision will be established within two years after the date of application of this Decision by the authority authorised to conclude contracts in order to check the competence, efficiency and integrity of those to be engaged. Successful candidates will be offered a contract under Article 2(a) of the Conditions of Employment of other Servants of the Communities laid down in Regulation (EEC, Euratom, ECSC) No 259/68.

2. All members of staff under contracts as referred to in paragraph 1 shall be offered the possibility to conclude contracts under Article 2(a) of the Conditions of Employment of other Servants of the Communities laid down in Regulation (EEC, Euratom, ECSC) No 259/68 at the various grades as set out in the establishment plan. To that end, ***after consultation of the European Personnel Selection Office***, an internal selection process limited to staff employed by Europol before the date of application of this Decision will be established within two years after the date of application of this Decision by the authority authorised to conclude contracts in order to check the competence, efficiency and integrity of those to be engaged. ***This selection process shall be monitored by the Commission. The outcome of this selection process shall be made public.*** Successful candidates will be offered a contract under Article 2(a) of the Conditions of Employment of other Servants of the Communities laid down in Regulation (EEC, Euratom, ECSC) No 259/68. ***The draft establishment plan forwarded to the budgetary authority together with the preliminary draft budget of the European Union shall clearly indicate the posts filled by staff employed under the Staff Regulations of officials and the conditions of employment of other servants of the European Communities, and the posts filled by staff employed under the Europol Staff Regulations.***

Justification

The internal selection process should be accompanied by the European Personnel Selection Office which, being the expert for EU recruitment, should guarantee professional personnel selection standards. Since the number of staff choosing to continue to work under the Europol Staff Regulations may have an effect on the overall staff costs of the agency, the budgetary authority should be kept informed about the ratio between the two groups of Europol personnel, those working under European Community rules and those working under the old Europol conditions.

Amendment 55

Article 57, paragraph 3, subparagraph 2 a (new)

Under no circumstances shall the Community subsidy for Europol, as established by this Decision, be used to honour expenditure relating to commitments made by Europol in accordance with the Europol Convention, before this Decision is applicable.

Justification

All commitments made by Europol under its old legal regime, the Europol Convention, shall be covered by the Member States.

EXPLANATORY STATEMENT

If it is to respond to changing circumstances within the European Union, to new forms of crime and to new terrorist threats, Europol will have to extend its powers and alter its *modus operandi* by introducing greater flexibility into its mechanisms. However, Europol's current legal framework greatly impedes any process intended to update or modify powers.

Europol was created by means of the 26 July 1995 Europol Convention, pursuant to which any modification must be unanimously approved by the Council and subsequently ratified by each Member State. Between 2000 and 2003, three protocols amending the Europol Convention were adopted and they will come into force on 29 March and 18 April 2007 - i.e. four, five and seven years after being adopted. This shows that the procedure is a complicated and particularly lengthy one.

The entry into force of the Amsterdam Treaty provided the institutions with new legal mechanisms which were more flexible and more adaptable to the changing circumstances in which the EU found itself. The mechanisms are the third-pillar decisions and framework decisions which do not need to be ratified by each Member State.

On the legal basis provided by Article 34(2) of the EU Treaty, Parliament has repeatedly called for the Europol Convention to be amended by means of the new mechanisms mentioned above. Hence the rapporteur takes a highly favourable view of the proposal for a Council decision by means of which the European Police Office will be set up and which will replace and derogate from the Europol Convention and the three protocols thereto.

The proposal for a Council decision provides for the conversion of Europol into an EU agency, which will have two consequences: funding will have to be provided from the Community budget and Europol staff will acquire the status of EC officials.

Under the new rules the Police Office will not be restricted to intervention against organised crime. This is a significant change, since it involves extending Europol's scope to encompass other types of serious offence committed outside the sphere of organised crime.

The proposal contains provisions for the coordination, organisation and implementation of investigations and operational activities carried out in conjunction with the Member States' relevant authorities or by joint investigative teams. The rapporteur welcomes the fact that Europol will be able to initiate action relating to money-laundering and to ask the Member States to launch certain investigations. The fact that the proposal incorporates the provisions relating to access to Europol documents pursuant to European Parliament and Council Regulation (EC) No 1049/2001 is to be applauded.

However, the rapporteur considers that certain amendments should be made in areas including data-protection and democratic control over Europol.

The possibility of obtaining data from private entities calls for a great deal of thought, since such data may not have been obtained by safe, reliable means, for which reason cases must be

considered individually and additional safeguards (including judicial review) must be introduced. As regards the processing of data with a view to determining whether or not they are relevant to Europol tasks, a reasonable period of time must be established within which those data may be assessed without risk to individual rights.

Where the exchange of data with other Community bodies is concerned, it must be ensured - if Europol is ultimately unable to take the form of a Community body - that the Police Office is not treated like an organisation belonging to a third country. A reference must be included to the effect that Article 7 of Regulation No 45/2001 will be applied for the purpose of ensuring uniformity.

The creation of an independent Ombudsman to protect Europol data is a very wise move - although additional guarantees will have to be provided in order to safeguard his independence. The Ombudsman responsible for data-protection will make a positive contribution to increasing the confidence which the Member States' authorities have in Europol.

With specific reference to relations between Europol and the European Parliament, the following aspects should be highlighted. Firstly, one and the same system must serve for both appointing and dismissing Europol's Director. Under the current proposal, Parliament will be consulted only if the Director is to be dismissed. This asymmetry should be removed by allowing Parliament to play a part in selecting the Director.

The system by means of which Europol is financed is the subject of intense debate within the Council. There are two possibilities: either the current system of intergovernmental financing continues in operation, or Europol is financed from the Community budget. The current trend is to continue with direct funding from the Member States. The rapporteur is not happy with this and he draws attention to the importance of the budget as the main means of control which the European Parliament could exercise over Europol. Involvement by Parliament in the drawing up of Europol's budget would help to increase the degree of democratic control over Europol.

Lastly, it should be pointed out that the change in legal basis does not at first sight appear to constitute an increase in democratic legitimacy, since the negotiation of a decision does not call for ratification by the Member States' parliaments. Hence it is desirable that the European Parliament should be able to approve the Europol budget in order to have an overview of its activities.

The rapporteur also suggests that Europol's priorities could be presented annually within a 'Joint Committee' comprising members of the European Parliament's relevant committee and their counterparts from the Member States' parliaments. This suggestion springs from the need for the European Parliament to be involved in Europol's development in order to ensure that Europol enjoys maximum democratic legitimacy.

29.5.2007

OPINION OF THE COMMITTEE ON BUDGETS

for the Committee on Civil Liberties, Justice and Home Affairs

on the proposal for a Council decision establishing the European Police Office (EUROPOL)
(COM(2006)0817 – C6-0055/2007 – 2006/0310(CNS))

Draftswoman: Jutta Haug

SHORT JUSTIFICATION

Background

Point 47 of the Interinstitutional Agreement on budgetary discipline and sound financial management of 17 May 2006 stipulates that the two arms of the budgetary authority have to come to a timely agreement on the financing of any new agency.

47. When drawing up its proposal for the creation of any new agency, the Commission will assess the budgetary implications for the expenditure heading concerned. On the basis of that information and without prejudice to the legislative procedures governing the setting up of the agency, the two arms of the budgetary authority commit themselves, in the framework of budgetary cooperation, to arrive at a timely agreement on the financing of the agency.

The inclusion of such a provision in the IIA was requested by Parliament, which hoped, by these means, to prevent future agencies from being financed through reprogramming or by using the margins. In other words, new agencies should not automatically be covered by the Financial Framework but might require "fresh" money.

Commission proposal

Europol is not a straightforward case of a "new" agency because it was created in 1995 on the basis of a Convention between Member States. It has thus existed for several years and is not a new agency as such. However, with its current proposal the Commission aims at converting Europol from an intergovernmental body (set up under the provisions of the Treaty of Maastricht) into a European Union agency to be fully financed from the Community budget, a step which "will enhance the role of the European Parliament in the control over Europol".

The financial impact of the proposal will only take effect in 2010, after the adoption of the implementing measures, with a total reference amount of EUR 334 million for the period

from 2010 - 2013 (2010: 82 million, 2011: 83 million, 2012: 84 million and 2013: 85 million). These amounts have already been fully included in the Commission's latest update of financial programming presented in January 2007.

By becoming a European Union agency, Europol is to be considered a new agency budgetwise and treated accordingly, i.e. with due regard for Parliament's prerogatives as stipulated in Point 47 of the IIA.

General problem of interdependence between the legislative and the Point 47 procedure

In the current case of Europol, the two arms of the budgetary authority have not yet agreed on the financing of this agency, which is new to the EU budget. Nevertheless, the legislative procedure has already started, at least in Parliament. While the Commission proposal is currently blocked in Council owing to a profound controversy as to whether Europol should be communitarised at all, Parliament wants to act quickly in order to show its support for the Commission's intention to make Europol an EU agency. Because Council has not so far been willing, owing to its internal problems with the proposal, to discuss the financing of Europol in a trialogue, no Point 47 agreement has yet been reached.

Should this lack of a timely agreement on the financing of a new agency now bring the whole legislative procedure aimed at creating this agency to a standstill? In these circumstances, your draftsman has opted for a pragmatic approach, viz.: adoption of the founding decision with "disclaimers", indicating that no agreement on the financing has yet been reached and that this problem is therefore still open for negotiation (Amendments 1, 2, 3, 4 and 10).

Particular problems of Europol as an EU agency

Given that the proposal for the Europol founding decision was modelled on the Europol Convention, with its strong intergovernmental character, some elements the Committee on Budgets has traditionally considered important for agencies are not formulated clearly enough or are missing altogether. Your draftsman has strengthened / reintroduced these elements, i.e. with regard to the general prerogatives of Parliament (Amendments 5, 8, 12, 13 and 16), the rights and duties of the bodies of Europol (Amendments 6, 7, 9 and 11), the agency's financial rules (Amendments 14 and 19), its monitoring system (Amendment 15) and the selection of its staff and their conditions of employment (Amendments 17 and 18).

AMENDMENTS

The Committee on Budgets calls on the Committee on Civil Liberties, Justice and Home Affairs, as the committee responsible, to incorporate the following amendments in its report:

Draft legislative resolution

Amendment 1
Paragraph 1 a (new)

1a. Considers that the financial reference amount indicated in the legislative proposal must

be compatible with the ceiling of heading 3a of the new multiannual financial framework (MFF) and with the provisions of Point 47 of the IIA of 17 May 2006;

Amendment 2
Paragraph 1 b (new)

1b. Recalls that the opinion delivered by the Committee on Budgets does not pre-empt the outcome of the procedure laid down in Point 47 of the IIA of 17 May 2006 which applies to the setting up of the European Police Office;

Proposal for a decision

Text proposed by the Commission¹

Amendments by Parliament

Amendment 3
Citations 1 a and 1 b (new)

Having regard to Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities¹ (Financial Regulation), and in particular Article 185 thereof,

Having regard to the Interinstitutional Agreement of 17 May 2006 between the European Parliament, the Council and the Commission on budgetary discipline and sound financial management², and in particular Point 47 thereof,

¹ OJ L 248, 16.9.2002, p. 1. Regulation as amended by Regulation (EC, Euratom) No 1995/2006 (OJ L 390, 30.12.2006, p. 1).

² OJ C 139, 14.6.2006, p. 1.

Justification

Europol is set up as a European Union agency. This has to be reflected in the legal bases referred to in the Decision.

Amendment 4
Recital 5

(5) Establishing Europol as an agency of the

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¹ OJ C , , p..

European Union, funded from the general budget of the European Communities will enhance the role of the European Parliament in the control over Europol, through the involvement of the European Parliament in the adoption of the budget.

European Union, funded from the general budget of the European Communities, will enhance the role of the European Parliament in the control over Europol, through the involvement of the European Parliament in the adoption of the budget, ***including the establishment plan, and in the discharge procedure.***

Justification

Parliament's role in adopting the agency's establishment plan and in granting discharge to the agency should be duly noted.

Amendment 5
Article 1, paragraph 1

1. This Decision establishes a European Police Office, hereinafter referred to as 'Europol', as an agency of the Union. Europol shall have its seat in The Hague, the Netherlands.

1. This Decision establishes a European Police Office, hereinafter referred to as 'Europol', as an agency of the Union. ***It is a body set up in accordance with Article 185 of the Financial Regulation and Point 47 of the Interinstitutional Agreement on budgetary discipline and sound financial management of 17 May 2006.*** Europol shall have its seat in The Hague, the Netherlands.

Justification

See Amendment 3.

Amendment 6
Article 36, paragraph 8, point (c)

(c) adopt the implementing rules applicable to Europol staff, on a proposal from the Director and after ***seeking*** agreement from the Commission;

(c) adopt the implementing rules applicable to Europol staff, on a proposal from the Director and after agreement from the Commission;

Justification

The implementing rules applicable to Europol staff have to be agreed by the Commission.

Amendment 7
Article 36, paragraph 9

9. The Management Board shall adopt each year:
- (a) the draft budget estimate **and the preliminary draft budget** to be submitted to the Commission, including the establishment plan, **and the final budget**;
 - (b) a work programme for Europol's future activities taking into account Member States' operational requirements **and budgetary and staffing implications for Europol**, after the Commission has delivered an opinion;
 - (c) a general report on Europol's activities during the previous year.

These documents shall **be submitted to the Council for endorsement. They shall also be forwarded by the Council** to the European Parliament **for information**.

9. The Management Board shall adopt each year, **after endorsement by the Council**:
- (a) the draft budget estimate to be submitted to the Commission, including the **draft** establishment plan;
 - (aa) the agency's budget, including the establishment plan, after authorisation by the budgetary authority;**
 - (b) a work programme for Europol's future activities taking into account, **as far as possible**, Member States' operational requirements **in accordance with the financial and human resources available**, after the Commission has delivered an opinion;
 - (c) a general report on Europol's activities during the previous year, **comparing, in particular, the results achieved with the objectives of the annual work programme**.

These documents shall be forwarded to the European Parliament.

Justification

In this description of the management board's responsibilities it should be clarified that the board can only adopt the budget of the agency, including its establishment plan, after authorisation by the budgetary authority. Some other clarifications regarding the work programme and the annual report also seem necessary. As is the case with other agencies, all documents of this kind should be transmitted directly to Parliament.

Amendment 8
Article 37, paragraph 1

1. Europol shall be headed by a Director appointed by the Council, acting by a qualified majority, from a list of at least three candidates presented by the Management Board, for a **four-year** period extendable once.

1. Europol shall be headed by a Director appointed by the Council, acting by a qualified majority, **after consulting the European Parliament**, from a list of at least three candidates presented by the Management Board, for a **five-year** period

extendable once.

Justification

Appointing the director of Europol should follow the same procedure as dismissing him/her, i.e. Parliament should be consulted. The usual term of office for directors of agencies is five years, extendable once.

Amendment 9

Article 37, paragraph 4, point (g a) (new)

(ga) the implementation of effective monitoring and evaluation procedures relating to the performance of the Agency in terms of achieving its objectives.

Justification

The Director's responsibility for monitoring and evaluating the performance of EUROPOL should also be included in the task list for this office.

Amendment 10

Article 41, paragraph 1

1. The revenues of Europol shall consist, without prejudice to other types of income, of a subsidy from the Community entered in the general budget of the European Union (Commission section) as from 1 January 2010.

1. The revenues of Europol shall consist, without prejudice to other types of income, of a subsidy from the Community entered in the general budget of the European Union (Commission section) as from 1 January 2010. ***The financing of Europol is subject to an agreement by the budgetary authority as foreseen by the Interinstitutional Agreement of 17 May 2006.***

Justification

Article 47 of the IIA of 17 May 2006 stipulates that "without prejudice to the legislative procedures governing the setting up of the agency, the two arms of the budgetary authority commit themselves ... to arrive at a timely agreement on the financing of the agency". It is necessary to note in this place that, notwithstanding the stage legislative procedures have reached, an agreement on the financing of Europol will also have to be achieved.

Amendment 11

Article 41, paragraph 3

3. The Director shall draw up a draft estimate of the revenues and expenditure of Europol for the following financial year and

3. The Director shall draw up a draft estimate of the revenues and expenditure of Europol for the following financial year and

shall forward it to the Management Board together with a **provisional** establishment plan. The establishment plan shall consist of posts of a permanent or temporary nature and a reference to national experts seconded, and shall state the number, grade and category of staff employed by Europol for the financial year in question.

shall forward it to the Management Board together with a **draft** establishment plan. The **draft** establishment plan shall consist of posts of a permanent or temporary nature and a reference to national experts seconded, and shall state the number, grade and category of staff employed by Europol for the financial year in question.

Justification

It has to be made clear that the establishment plan can only become final after authorisation by the budgetary authority.

Amendment 12

Article 42, paragraph 8 a (new)

8a. The Director shall submit to the European Parliament, at the latter's request, any information required for the smooth application of the discharge procedure for the financial year in question, as laid down in Article 146(3) of the Financial Regulation.

Justification

Some strengthening of the agency's director's obligation to cooperate in the discharge procedure seems appropriate, as it is traditionally included in other agencies' founding regulations.

Amendment 13

Article 42, paragraph 9

9. Upon a recommendation from the Council, the European Parliament shall, before 30 April of year n + 2, give a discharge to the Director of Europol in respect of the implementation of the budget for year n.

9. The European Parliament, ***taking into account a recommendation from the Council acting by a qualified majority,*** shall, before 30 April of year n + 2, give a discharge to the Director of Europol in respect of the implementation of the budget for year n.

Justification

The recommendation from the Council is not a prerequisite for Parliament's rights in the discharge procedure.

Amendment 14

Article 43

The financial rules applicable to Europol shall be adopted by the Management Board after having consulted the Commission. They may not depart from Regulation (EC, Euratom) No 2343/2002 of 23 December 2002, unless *necessary* for Europol's operation. The prior consent of the Commission shall be required for the adoption of any rules which derogate from the Regulation (EC, Euratom) No 2343/2002. The budgetary authority shall be informed of these derogations.

The financial rules applicable to Europol shall be adopted by the Management Board after having consulted the Commission. They may not depart from Regulation (EC, Euratom) No 2343/2002 of 23 December 2002, unless *specifically required* for Europol's operation. The prior consent of the Commission shall be required for the adoption of any rules which derogate from Regulation (EC, Euratom) No 2343/2002. The budgetary authority shall be informed of these derogations.

Justification

Derogations from Regulation No 2343/2002 should be kept to an absolute minimum. The agency has to prove beyond any doubt that such derogation is the only way to guarantee its proper functioning within the limits of its founding decision.

Amendment 15 Article 44, paragraph 1

The Director will establish a monitoring system in order to collect indicators of the effectiveness and efficiency of the duties performed within Europol.

The Director will establish a monitoring system in order to collect indicators of the effectiveness and efficiency of the duties performed within Europol. ***The Director shall report annually to the Management Board on the results of this monitoring.***

Justification

The Management Board should be informed regularly of the results of the monitoring exercise to enable it to react promptly to any problems.

Amendment 16 Article 47

The chairman of the Management Board and the Director may appear before the European Parliament to discuss ***general questions*** relating to Europol.

The Director ***shall*** appear before the European Parliament ***at its request*** to discuss ***any question*** relating to Europol.

Justification

As is the case with other agencies, the Director should have the obligation to appear before

Parliament if it wishes to discuss questions relating to Europol.

Amendment 17
Article 56, paragraph 1

1. By way of derogation from Article 38, all employment contracts concluded by Europol, as established by the Europol Convention before the entry into force of this Decision will be honoured.

1. By way of derogation from Article 38, all employment contracts concluded by Europol, as established by the Europol Convention before the entry into force of this Decision, will be honoured. ***The possible additional staffing cost generated by this derogation from Article 38 will be taken into account in the agreement on the financing of Europol to be reached according to Point 47 of the Interinstitutional Agreement of 17 May 2006.***

Justification

The indicative financial reference amount as also used in the Commission's financial programming is the basis on which the budgetary authority will decide on the financing of the agency according to Point 47 IIA. If the provision to honour employment contracts concluded by Europol should lead to any deviation from the financial reference amount currently indicated in the Commission proposal this will have to be taken into account in the negotiations of the budgetary authority on the financing of the agency.

Amendment 18
Article 56, paragraph 2

2. All members of staff under contracts as referred to in paragraph 1 shall be offered the possibility to conclude contracts under Article 2(a) of the Conditions of Employment of other Servants of the Communities laid down in Regulation (EEC, Euratom, ECSC) No 259/68 at the various grades as set out in the establishment plan. To that end an internal selection process limited to staff employed by Europol before the date of application of this Decision will be established within two years after the date of application of this Decision by the authority authorised to conclude contracts in order to check the competence, efficiency and integrity of those to be engaged. Successful candidates will be offered a

2. All members of staff under contracts as referred to in paragraph 1 shall be offered the possibility to conclude contracts under Article 2(a) of the Conditions of Employment of other Servants of the Communities laid down in Regulation (EEC, Euratom, ECSC) No 259/68 at the various grades as set out in the establishment plan. To that end, ***after consultation of the European Personnel Selection Office***, an internal selection process limited to staff employed by Europol before the date of application of this Decision will be established within two years after the date of application of this Decision by the authority authorised to conclude contracts in order to check the competence, efficiency and

contract under Article 2(a) of the Conditions of Employment of other Servants of the Communities laid down in Regulation (EEC, Euratom, ECSC) No 259/68.

integrity of those to be engaged. ***This selection process shall be monitored by the Commission. The outcome of this selection process shall be made public.*** Successful candidates will be offered a contract under Article 2(a) of the Conditions of Employment of other Servants of the Communities laid down in Regulation (EEC, Euratom, ECSC) No 259/68. ***The draft establishment plan forwarded to the budgetary authority together with the preliminary draft budget of the European Union shall clearly indicate the posts filled by staff employed under the Staff Regulations of officials and the conditions of employment of other servants of the European Communities, and the posts filled by staff employed under the Europol Staff Regulations.***

Justification

The internal selection process should be accompanied by the European Personnel Selection Office which, being the expert for EU recruitment, should guarantee professional personnel selection standards. Since the number of staff choosing to continue to work under the Europol Staff Regulations may have an effect on the overall staff costs of the agency, the budgetary authority should be kept informed about the ratio between the two groups of Europol personnel, those working under European Community rules and those working under the old Europol conditions.

Amendment 19

Article 57, paragraph 3, subparagraph 2 a (new)

Under no circumstances shall the Community subsidy for Europol, as established by this Decision, be used to honour expenditure relating to commitments made by Europol in accordance with the Europol Convention, before this Decision is applicable.

Justification

All commitments made by Europol under its old legal regime, the Europol Convention, shall be covered by the Member States.

PROCEDURE

Title	Establishment of the European Police Office (EUROPOL)
References	COM(2006)0817 - C6-0055/2007 - 2006/0310(CNS)
Committee responsible	LIBE
Opinion by Date announced in plenary	BUDG 15.2.2007
Drafts(wo)man Date appointed	Jutta Haug 20.9.2004
Date adopted	21.5.2007
Result of final vote	+: 30 -: 0 0: 0
Members present for the final vote	Laima Liucija Andrikienė, Richard James Ashworth, Reimer Böge, Herbert Bösch, Simon Busuttil, Paulo Casaca, Gérard Deprez, Valdis Dombrovskis, Brigitte Douay, James Elles, Göran Färm, Szabolcs Fazakas, Salvador Garriga Polledo, Ingeborg Gräßle, Louis Grech, Nathalie Griesbeck, Catherine Guy-Quint, Jutta Haug, Monica Maria Iacob-Ridzi, Ville Itälä, Anne E. Jensen, Janusz Lewandowski, Vladimír Maňka, Mario Mauro, Francesco Musotto, Esko Seppänen, Nina Škottová, László Surján, Helga Trüpel
Substitute(s) present for the final vote	Hans-Peter Martin

3.5.2007

OPINION OF THE COMMITTEE ON CONSTITUTIONAL AFFAIRS

for the Committee on Civil Liberties, Justice and Home Affairs

on the proposal for a Council decision establishing the European Police Office (EUROPOL)
(COM(2006)0817 – C6-0055/2007 – 2006/0310(CNS))

Draftsman: György Schöpflin

SHORT JUSTIFICATION

The Rapporteur welcomes the proposal, especially with regard to the development of the democratic scrutiny over the Europol, and proposes some amendments to emphasise it.

AMENDMENTS

The Committee on Constitutional Affairs calls on the Committee on Civil Liberties, Justice and Home Affairs, as the committee responsible, to incorporate the following amendments in its report:

Text proposed by the Commission¹

Amendments by Parliament

Amendment 1
Recital 4 a (new)

(4a.) Parliament, in its "recommendation to the Council on Europol: reinforcing parliamentary controls and extending powers"¹, of 13 April 1999, called for the incorporation of Europol into the institutional framework of the European Union and its being subject to democratic scrutiny by Parliament.

¹ OJ C 219, 30.7.1999, p. 101.

¹ Not yet published in OJ.

Amendment 2
Recital 4 b (new)

(4b.) Parliament, in its "recommendation to the Council on the future development of Europol and its automatic incorporation into the institutional system of the European Union"¹, of 30 May 2002, and in its "recommendation to the Council on the future development of Europol"², of 10 April 2003, called for the placing of Europol on a Community footing.

¹ *OJ C 187 E*, 7.8.2003, p. 144.

² *OJ C 64 E*, 12.3.2004, p. 588.

Amendment 3
Recital 5

(5) Establishing Europol as an agency of the European Union, funded from the general budget of the European Communities will enhance the role of the European Parliament in the control over Europol, through the involvement of the European Parliament in the adoption of the budget.

(5) Establishing Europol as an agency of the European Union, funded from the general budget of the European Communities will enhance the role of the European Parliament in the control ***of, and democratic scrutiny*** over, Europol, through the involvement of the European Parliament in the adoption of the budget.

Amendment 4
Recital 6 a (new)

(6a) Establishing the Europol agency calls for an interinstitutional agreement which lays down the basic conditions governing the European regulatory agencies in order to structure existing and future agencies in a way that promotes clarity, transparency and legal certainty.

Amendment 5
Recital 8 a (new)

(8a) Following the extension of the operational powers of Europol some improvements are still needed as regards its democratic responsibility.

Amendment 6

Recital 11

(11) This Decision is in line with the Council Framework Decision 2007/XX/JHA on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters;

(11) This Decision is in line with, ***and its implementation is conditional upon the immediate adoption of,*** the Council Framework Decision 2007/XX/JHA on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters;

Justification

This decision must not be implemented - with particular regard to the processing of data by Europol - unless the protection of personal data has already been incorporated into the third pillar.

Amendment 7

Article 5, paragraph 1, point (a)

(a) the collection, storage, processing, analysis and exchange of information and intelligence forwarded by the authorities of the Member States or third countries or other public or private entities;

(a) the collection, storage, processing, analysis and exchange of information and intelligence forwarded by the authorities of the Member States or third countries or other public or private entities; ***when such information comes from private parties it shall, before being forwarded to Europol, be collected and processed in accordance with EU legislation and international conventions on civil rights as well as national legislation implementing Directive 95/46/EC, and access by Europol shall only be allowed on a case-by-case basis, for specified purposes, and such access shall be subject to judicial scrutiny in the Member States;***

Amendment 8

Article 10, paragraph 2

2. Europol may process data for the purpose

2. Europol may process ***relevant,***

of determining whether such data are relevant for its tasks, and can be included in one of its information systems.

appropriate data, which do not go beyond that required in order to meet the objective pursued, for the purpose of determining whether such data are relevant for combating specific criminal activities in the performance of its tasks, and can legally be included in one of its information systems.

Justification

This reference to Europol's powers is very wide-ranging and vaguely worded; it is contrary to the proportionality principle and there is an inherent risk that the data may be processed for any unspecified purpose.

PROCEDURE

Title	Establishment of the European Police Office (EUROPOL)		
References	COM(2006)0817 - C6-0055/2007 - 2006/0310(CNS)		
Committee responsible	LIBE		
Opinion by Date announced in plenary	AFCO 1.2.2007		
Drafts(wo)man Date appointed	György Schöpflin 1.3.2007		
Discussed in committee	10.4.2007	10.4.2007	2.5.2007
Date adopted	2.5.2007		
Result of final vote	+: 18	-: 1	0: 0
Members present for the final vote	Enrique Barón Crespo, Richard Corbett, Brian Crowley, Philip Dimitrov Dimitrov, Andrew Duff, Maria da Assunção Esteves, Ingo Friedrich, Anneli Jäätteenmäki, Sylvia-Yvonne Kaufmann, Jo Leinen, Íñigo Méndez de Vigo, Rihards Pīks		
Substitute(s) present for the final vote	Klaus Hänsch, Roger Helmer, Gérard Onesta, Georgios Papastamkos, Jacek Protasiewicz, György Schöpflin, Alexander Stubb		

PROCEDURE

Title	Establishment of the European Police Office (EUROPOL)			
References	COM(2006)0817 - C6-0055/2007 - 2006/0310(CNS)			
Date of consulting Parliament	24.1.2007			
Committee responsible Date announced in plenary	LIBE 1.2.2007			
Committee(s) asked for opinion(s) Date announced in plenary	BUDG 15.2.2007	AFCO 1.2.2007		
Rapporteur(s) Date appointed	Agustín Díaz de Mera García Consuegra 25.1.2007			
Discussed in committee	25.1.2007	27.2.2007	20.3.2007	12.11.2007
Date adopted	12.11.2007			
Result of final vote	+: -: 0:	29 9 0		
Members present for the final vote	Carlos Coelho, Esther De Lange, Panayiotis Demetriou, Agustín Díaz de Mera García Consuegra, Bárbara Dührkop Dührkop, Armando França, Kinga Gál, Patrick Gaubert, Lilli Gruber, Ewa Klamt, Magda Kósáné Kovács, Barbara Kudrycka, Stavros Lambrinidis, Henrik Lax, Roselyne Lefrançois, Claude Moraes, Javier Moreno Sánchez, Martine Roure, Luciana Sbarbati, Inger Segelström, Károly Ferenc Szabó, Søren Bo Søndergaard, Vladimir Urutchev, Ioannis Varvitsiotis, Manfred Weber, Tatjana Ždanoka			
Substitute(s) present for the final vote	Adamos Adamou, Simon Busuttil, Marco Cappato, Maria da Assunção Esteves, Ignasi Guardans Cambó, Luis Herrero-Tejedor, Sophia in 't Veld, Carlos José Iturgaiz Angulo, Metin Kazak, Eva-Britt Svensson			
Substitute(s) under Rule 178(2) present for the final vote	Carmen Fraga Estévez, Fernando Fernández Martín			
Date tabled	15.11.2007			