

EUROPOL: establishing the European Police Office

2006/0310(CNS) - 17/01/2008 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted a legislative resolution based on the report drafted by Agustin **DÍAZ DE MERA GARCÍA CONSUEGRA** (EPP-ED, ES,) amending, under the consultation procedure, the proposal for a Council decision establishing the European Police Office (EUROPOL). The resolution was adopted by 502 votes for 46 against and 41 abstentions. Parliament called on the Council to consult Parliament again within the framework of the Treaty of Lisbon if the Council decision establishing Europol is not adopted by June 2008.

The main amendments are as follows:

-Parliament has added that Europol is an agency within the meaning of **Article 185 of the Financial Regulation and Point 47 of the Interinstitutional Agreement (IIA)**.

Democratic scrutiny: EUROPOL shall be subject to democratic scrutiny by the Parliament. It is proposed to strengthen democratic scrutiny through the involvement of the European Parliament in the adoption of the budget, including the establishment plan, and in the discharge procedure, granting of financial and human resources, annual reports, etc. The Parliament should also be consulted on the appointment of EUROPOL's Director. 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 national parliaments in order to guarantee a democratic debate with civil society and a better control over its activities.

Financing of EUROPOL: the financing of Europol is subject to an agreement by the budgetary authority as foreseen by the Interinstitutional Agreement. Parliament added that under no circumstances shall the Community subsidy for Europol, as established by this Decision, be used to meet expenditure relating to commitments made by Europol in accordance with the Europol Convention, before the entry into force of this Decision.

Access and processing of certain data: Parliament has included the following specifications as regards this issue:

-direct access by the national units to the information system in respect of the persons referred to in Article 12(1)(b) (i.e persons who there are factual indications or serious grounds under national law to believe will commit criminal offences in respect of which Europol is competent) 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;

-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;

-in so far as Europol is entitled 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.

-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.

Access to personal data shall be denied only if such refusal is necessary to: i) enable Europol to fulfil its activities properly; ii) guarantee that any national investigation which Europol is assisting will not be jeopardised; iii) protect the rights and freedoms of third parties.

-where **Europol transmits data to third bodies**, 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 the data could be transferred, the purposes for which the data could be used and 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 reciprocity in the exchange of information, and shall regularly inform the European Parliament, the Council and the Commission, as well as the data protection supervisory bodies, of the decisions taken in implementing this Article.

-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.

-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. Parliament added to this that 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 Recommendation No R (87) 15 of the Committee of Ministers of the Council of Europe of 17 September 1987 regulating the use of personal data in the police sector.

Protection of data:

-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 on the protection of individuals with regard to the processing of personal data. 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;

-Europol shall appoint an independent Data Protection Officer. In carrying out his tasks, the data protection officer should cooperate with the data protection officers appointed under Community law.

Storage of data: Parliament believes that the period according to which the storage of data shall be reviewed is too long. It provides that the need for continued storage shall be reviewed and documented at least every two years (rather than three years) after the input of data.

Interconnection: 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.

National units: the national unit shall 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.

Appointment of director: Parliament made some amendments to these provisions and stated that Europol shall be headed by a Director appointed by the Management Board in accordance with a cooperation (concertation) procedure, which involves the European Parliament. The procedure is set out in the text. The Director's term of office shall be four years.

Lastly, Parliament stipulated that the Decision will be revised within a period of six months following the date of entry into force of the Treaty of Lisbon.