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JAIEX 31
COLAC 26

'I/A' ITEM NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee/Council
No. prev. doc.:	5163/16, 13980/1/15 REV 1
Subject:	Draft COUNCIL IMPLEMENTING DECISION approving the conclusion by the European Police Office (Europol) of the Agreement on Strategic Cooperation between the Federative Republic of Brazil and Europol

1. Article 23(2) of Council Decision 2009/371/JHA of 6 April 2009 establishing the European Police Office (Europol)¹ provides that Europol's cooperation agreements "*may be concluded only after the approval by the Council, which shall previously have consulted the Management Board and, as far as it concerns the exchange of personal data, obtained the opinion of the Joint Supervisory Body via the Management Board*".

Article 6, paragraphs (3) and (4) of Council Decision 2009/934/JHA of 30 November 2009 adopting the implementing rules governing Europol's relations with partners, including the exchange of personal data and classified information² further provide that:

"(3) After finalising the negotiations to an agreement, the Director shall submit the draft agreement to the Management Board. (...) The Management Board shall endorse the draft agreement before submitting it to the Council for approval. (...)

¹ OJ L 121, 15.5.2009, p. 37.

² OJ L 325, 11.12.2009, p. 6.

(4) In accordance with Article 23(2) of the Europol Decision, such agreements shall only be concluded after the approval by the Council, which shall previously have consulted the Management Board (...)."

2. By letter dated 8 October 2015, the Chairperson of the Europol Management Board transmitted, in accordance with Article 23(2) of the Europol Council Decision, the draft Agreement on Strategic Co-operation in the fight against serious crime and terrorism between the Federative Republic of Brazil and the Europol, as endorsed by the Management Board on 6-7 October 2015, to the Council for approval (12926/15 + COR 1).
3. On 23 October 2015 the aforementioned draft Agreement on Strategic Co-operation in the fight against serious crime and terrorism between the Federative Republic of Brazil and the Europol (12926/15 + COR 1) as well as the draft Council Implementing Decision approving the conclusion of this Agreement (12927/15) were presented to the Law Enforcement Working Party (LEWP).
4. As no comments on these documents were received neither at the aforementioned meeting nor within the deadline for written comments of 9 November 2015, there are considered approved by the LEWP as from 10 November 2015.
5. After the approval by the LEWP, the text of the draft Council Implementing Decision approving the conclusion by the European Police Office (Europol) of the Agreement on Strategic Cooperation in the fight against serious crime and terrorism between the United Arab Emirates and Europol has undergone the lawyer-linguist revision. The revised version is set out in 13980/1/15 REV 1.
6. As indicated above, Article 23(2) of Decision 2009/371/JHA and Article 6(4) of Council Decision 2009/934/JHA provide that prior to the approval of the Europol's cooperation agreements the Council "shall previously have consulted the Management Board". Following the request by the Permanent Representatives Committee (5163/16 ENFOPOL 8 JAIEX 3 COLAC 1), the Management Board delivered its opinion on 4 February 2016.

7. In its judgment of 16 April 2015 in Case C-540/13, the Court of Justice of the European Union ruled that the Council should have consulted the European Parliament before adopting Council Decision 2013/392/EU fixing the date of effect of the VIS Decision, as stipulated by Article 39(1) of the former Treaty on European Union, even in cases where the relevant provision of the basic act - like Article 23(2) of Council Decision 2009/371/JHA - does not explicitly provide so. The conclusion of Europol's cooperation agreements with third countries should therefore as from now on be approved by adopting Council Implementing Decisions, regarding which the European Parliament should be consulted on the basis of Article 39(1) of the former Treaty on European Union.
 8. The European Parliament was consulted by the Council on 18 January 2016 and it delivered its positive opinion on 12 April 2016.
 9. *On this basis, the Permanent Representatives Committee/Council is invited to adopt the Draft Council Implementing Decision approving the conclusion by the European Police Office (Europol) of the Agreement on Strategic Cooperation in the fight against serious crime and terrorism between the Federative Republic of Brazil and Europol, as set out in 13980/1/15 REV 1 ENFOPOL 333 JAIEX 76 COLAC 106.*
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