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DRAFT STATEMENT OF THE COUNCIL'S REASONS

Subject: Position of the Council at first reading with a view to the adoption of a
REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE
COUNCIL on the European Union Agency for Law Enforcement
Cooperation (Europol) and replacing and repealing Decisions
2009/371/JHA, 2009/934/JHA, 2009/935/JHA, 2009/936/JHA and
2009/968/JHA
– Draft Statement of the Council's reasons

I. INTRODUCTION

On 27 March 2013, the Commission submitted a proposal for a Regulation of the European Parliament and of the Council on the European Union Agency for Law enforcement Cooperation and Training (Europol) and repealing Decisions 2009/371/JHA and 2005/681/JHA¹.

On 24 February 2014, the EP Plenary voted on the amendments to the Commission proposal, set out in 6745/1/14 REV 1, as well as on the mandate to open negotiations with the Council.

On 5 and 6 June 2014, the Council (JHA) adopted the general approach, set out in 10033/14.

On the same occasion, the Council gave the mandate to the Presidency to enter into negotiations with the European Parliament with a view to reaching a first-reading agreement as regards the draft Regulation on Europol.

Ten trilogues were held under the Italian, Latvian and Luxembourg Presidencies. A final compromise was found during the tenth trilogue on 26 November 2015 and the text of the draft regulation, as issued after the interinstitutional negotiations and set out in 14679/15, was submitted to COREPER on the same day.

On 30 November 2015 the LIBE Committee voted and approved the text of the draft regulation as it stood after the interinstitutional negotiations. The Chair of the LIBE Committee, Mr Claude MORAES, addressed a letter to the President of the Permanent Representatives Committee stating that, if this text was to be transmitted formally to the European Parliament as the Council's first reading position for this legislative proposal, he would recommend to the Members of the Committee on Civil Liberties, Justice and Home Affairs and subsequently to the Plenary that the Council's first reading position be accepted without amendments in Parliament's second reading, subject to verification by the lawyer-linguists of both institutions and the alignment of the relevant definitions with those agreed in the Data Protection Directive.

¹ Proposal for a Regulation of the European Parliament and of the Council on the European Union Agency for Law Enforcement Cooperation and Training (Europol) and repealing Decisions 2009/371/JHA and 2005/681/JHA, 8229/13 - COM(2013) 173 final.

A political agreement was adopted in COREPER/Council on 2 and 4 December 2015 with respect to the text of the Europol Regulation set out in 14713/15.

The text subsequently underwent a lawyer-linguistic revision.

II. OBJECTIVE

The aim of the proposal was to replace Council Decision 2009/371/JHA which established Europol² by a new Regulation based on Article 88 of the Treaty on the Functioning of the European Union introduced by the Lisbon Treaty and make Europol more efficient, more accountable and its data protection regime more robust, so that it can offer the best possible support to the Member States in their efforts of combating crime.

III. ANALYSIS OF THE COUNCIL'S POSITION AT FIRST READING

Several elements in the Regulation needed in-depth discussions in order for an agreement to be reached: parliamentary scrutiny, the appointment of the Executive Director of Europol, different aspects related to information processing and data protection, the Internet Referral Unit (IRU) and Europol's relations with partners.

The governance package and the interinstitutional balance

Following lengthy negotiations, the text of the Europol Regulation reflects an increased role of the European Parliament in a finely tuned interinstitutional balance with the Council and the Commission.

Europol's activities will be politically monitored by the Joint Parliamentary Scrutiny Group (JPSG) established together by the national parliaments and the competent committee of the European Parliament (Article 51).

² Council Decision 2009/371/JHA of 6 April 2009 establishing the European Police Office (Europol), OJ L 121, 15.05.2009, p. 37

The Executive Director will be appointed by the Council from a shortlist drawn up by a selection committee composed of members designated by Member States and a representative of the Commission. The selected candidate may be requested to appear before the competent committee of the EP, which will give a non-binding opinion to the Council (Article 54).

Moreover, the Management Board may invite to its meetings, as a non-voting observer, any person whose opinion may be relevant for discussion, including, where appropriate, a representative of the JPSG (Article 14 (4)).

Finally, in the area of Europol's relations with partners and of cooperation agreements, the role of both the Commission (assessment of such agreements) and the EP has been increased (Article 25).

These provisions contribute towards an increased transparency and accountability of Europol, while reflecting in a balanced manner the positions of the Council and of the European Parliament.

Internet Referral Unit (IRU)

In the beginning of 2015, in the aftermath of terrorist incidents in Paris and other locations, Europol's activity in the field of combatting radical propaganda on the internet expanded as the Council asked Europol to develop its Focal Point Check the Web into an EU Internet Referral Unit (IRU). The relevant provisions contained in the existing Council Decision 2009/371/JHA provided for the appropriate legal basis for such an activity.

However, the text of the new Regulation contained no similar provisions related to Internet referral. Moreover, the text of the original proposal and the Council's general approach explicitly prohibited Europol to send personal data to private parties, with a few exceptions which were not suitable for the purpose of EU IRU.

With a view to allowing Europol in the future to carry out Internet referral tasks, the text of the Regulation, following lengthy discussions during the interinstitutional negotiations, has been amended as follows:

- a new paragraph (m) was added in Article 4 (1), which provides an explicit legal basis for internet referrals. In addition, a new recital (38) further explains the context and the necessity of Europol performing such tasks;

- Article 26 (5) (c) allows Europol, under very strict conditions, to transfer publicly available personal data to private parties. The transfer should be strictly necessary for the performance of the task set out in Article 4(1)(m), should concern individual and specific cases and no fundamentals rights and freedoms of the data subjects concerned should override the public interest necessitating the transfer in the case at hand; and
- finally, as a completely new element, according to Article 26 (3), Europol may now receive personal data directly from private parties, following transfers on the basis of Article 26 (5) (c) and in connection therewith.

Information processing and data protection

The current Decision contains very strict provisions, allowing Europol to analyse information only within analytical work files. This means that Europol could not perform analysis across these files and therefore could not identify, for example, links or possible connections between organised crime and terrorism. This often leads to duplications of data relevant to several analytical working files.

The new system in the Regulation³, which was strongly supported by the Council, represents a conceptually different data processing environment reflecting, from Europol's perspective, an Integrated Data Management Concept (IDMC). This will enable Europol to identify links and connections between different investigations and to detect emerging trends and patterns in organised crime (increased operational support capacity). Duplications are avoided as information can be cross-checked (flexibility and legal certainty). From a technological point of view, the current structure of the Europol Information System is fully compatible with the implementation of the new system for data processing. Any adapting of the processing and analysis structure can be done at a later stage without further adaptation of the Regulation ("technology-neutral" legal framework). It is the Management Board which adopts guidelines further specifying the procedures for processing of information by Europol in accordance with Article 18, after having consulted the EDPS.

³ Provided for in Chapter IV (Processing of information), Chapter V (Relations with partners), Chapter VI (Data protection safeguards) and Chapter VII (Remedies and liability).

Following constructive negotiations with the EP, a high level of data protection regime has been agreed upon. Furthermore, this regime will be supervised both internally (Data Protection Officer) and externally (EDPS). In this sense, data protection is enhanced through inter alia strict restrictions on processing of data of special categories of data subjects, reports to the European Data Protection Supervisor (EDPS) on special categories of data, strict purpose limitations and a diversified access regime. The end result is a system which addresses the data protection related concerns voiced, while maintaining the effectiveness of Europol.

The text of the Regulation was aligned, to the greatest extent possible, to the data protection package.

IV. CONCLUSION

The Council's position at first reading reflects the compromise reached in negotiations between the Council and the European Parliament, facilitated by the Commission. Once adopted, the Regulation will replace the current Decision and will enter into application as from 1 May 2017. The new regime it provides for will allow Europol to benefit from an improved system of data processing and data protection and an increased operational flexibility.